



PHD

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Development ethics, Sen's *Idea of Justice* and the reproduction of injustice

Reconceptualising injustice in the context of development policy in Mexico

Oscar Rodrigo Garza Vázquez

A thesis submitted for the degree of Doctor of Philosophy

University of Bath
Department of Social and Policy Sciences

September 2016

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To my brother (...*hasta siempre*), my family and Vi

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Abstract

This dissertation analyses the contribution that Amartya Sen's idea of justice can make to inform development policies. Particularly, it examines to what extent Sen succeeds in presenting a useful theoretical framework for orienting political action towards justice-enhancing change.

In *The Idea of Justice* (2009), Sen argues that ideal theories of justice which aim at identifying the nature of a perfectly just society—what he calls 'transcendental' theories—are not appropriate either for examining prevalent injustices or for rectifying them. Sen therefore proposes a 'comparative framework' of justice capable of providing useful practical guidance to advance justice or reduce injustice, a task for which 'transcendental' Rawlsian-like theories are redundant. This dissertation critically assesses these two claims advanced by Sen. Taking John Rawls' *Theory of Justice* as an illustration, it argues that ideal theories are indeed essential, even if not sufficient, for the reduction of injustice. Therefore, it advances that it is necessary to complement ideal and nonideal approaches to justice. It then advocates for a 'dual Rawlsian/Senian framework'. Yet this dissertation argues that, even if coupled with an ideal theory, Sen's nonideal theory remains insufficient to orient injustice-reduction actions because it fails to take into account the overarching social nature of injustice and its perpetuation. In the light of this shortcoming, this dissertation stresses the need to conceptualise injustice as something different from simply the lack of justice and to understand it in a more dynamic and relational way. Ultimately, this implies further complementing a dual framework with a broader conceptualisation of injustice. The dissertation illustrates this argument with the social policy of *Oportunidades* in Mexico. It concludes that, in order to create a more just society, injustice-reduction policies need to go beyond the removal of capability-deprivations and address the ways in which injustice is reproduced through social interactions.

I. Development ethics, Sen's *Idea of Justice* and the reproduction of injustice

In recent years, Mexico achieved what was once unthinkable. Thanks to political agreements and a partial consensus between different and opposed political forces (political parties, labour unions, and entrepreneurs), the federal congress approved a series of legal and economic reforms which are seen as the way forward for developing the country¹. On 21 November 2012, Mexico approved amendments to labour laws, among other amendments. In the words of the incoming President of Mexico, the main feature of these labour reforms is the promotion of 'competitiveness, the flexibility of labour markets and the ease of job hiring' (La Grilla 2012; my translation). Yet the policy has generated conflicting opinions. While some sectors embraced it with optimism, others were troubled by it.

Most of the arguments in its favour were related to its (expected) positive impact on the country's economic growth and hence for its 'development'. For instance, according to the Mexican representatives of the Organisation for Economic Co-operation and Development (OECD), the reform would increase the GDP of Mexico by 4% (Hernández 2012). Similarly, the financial rating agency Standard & Poor's (S&P) expressed sympathy with the labour reform because it enhanced the country's attractiveness for investment (Cruz 2012). Likewise, the Mexican Business Coordinating Council (CCE) signalled that this was a positive step in increasing the productivity and economic growth on account of the 'modern' relationships in labour practices. This position was also shared by the Mexican Association for Human Resources Management (AMEDIRH), which expressed its support in the following words: 'The way to create jobs in modern society is [through] companies... The law that best protects workers is one that protects the companies where they work' (Borda 2012; my translation).

The speculated benefits of this reform, however, do not come without associated social costs, as these 'modern' relations of labour threaten historical labour rights attained since the Mexican Revolution of 1910. One danger is that formal work

¹ The banner of this consensus is called 'Moving Mexico' (*Mover a México*, in Spanish). Information available at <http://reformas.gob.mx/>.

can now be made temporary ('determinate', 'by season', 'indeterminate', 'by unit of time [i.e. hourly]', or for a one-time job). Therefore, an employment relationship in systematic short contracts can occur without employees gaining seniority, social security, and pension benefits (Art. 39-F). Also, employees can now be placed under the condition of 'subject to be tested' (probation) for a period of 90 days, or up to 180 days for high-level jobs. Meanwhile, redundancy payments are significantly reduced. As a result, corporations are now able to dismiss employees 'without [involving] any responsibility for the employer' (that is, without any compensation to the employee) (Art. 35, 39-A). Besides, outsourcing employment is now supported by the reform (Art. 13)². (For a more comprehensive analysis of the labour reform, see Bensusán 2013.)

In other words, the labour reform threatens workers' protection and their employment stability, but it does so with the intention of increasing the productivity and competitiveness of the country and hence its *economic* development. Certainly, there is no clear way to evaluate these reforms as none of these worries is unreasonable, yet these practical questions are of primary importance for any society since they are ubiquitous in the process of development. How can a society decide whether any given policy implementation such as the labour reform is actually desirable from a socially ethical point of view? The answer to this question depends—to a certain extent—on what is meant by development and on how best it can be attained in a socially desirable way. This is precisely the object of study of the area of development ethics in which this dissertation is situated, an area that can be broadly understood as the ethical critical assessment of the ends as well as the means of development (e.g. see Astroulakis 2011, Crocker 2008, 1991, Goulet 1997, Qizilbash 1996; see also Sen 1988, Seers 1969 for discussions on the meaning of development).

1.1 Development ethics and social justice

One justification of social and political actions depends—at least partly—on whether they are seen as conducive to development or not. The difficulty, however, lies on determining whether the conceptualisation of development and

² Note that outsourcing is usually considered to be beneficial for corporation's productivity but detrimental for labourers' work conditions (Perraudin et al. 2013), and workers' discontent has been already shown in Mexico (e.g. see Alcalde 2013).

the policies it justifies are acceptable from an ethical point of view. For example, social policies may be judged from efficiency-related concerns, or in relation to their contribution to economic prosperity, from the perspective of equality, or related to some other desirable end in society. For a long time, these ethical decisions have usually been based, or at least legitimised, within a utilitarian framework which—in practice—has been characterised by (1) an exclusive focus on the consequences (with no attention to processes) of social, economic and political actions and (2) the evaluation of the state of affairs in terms of a numerical aggregate measure of income (with no direct attention to other desirable outcomes or to its distribution) (see Sen 1999a, pp. 58–63, Sen 1988, Seers 1969). Together, these features have provided the background conditions for equating the meaning of development to that of *economic* development and thus to an excessive focus on economic growth as the ultimate end of development and human progress³. Actually, the approval of the labour reforms in Mexico shows that the identification of development in purely monetary terms and its underlying framework continues to be dominant when it comes to promoting and legitimising social policies in most countries today. In this way, this idea of development has greatly shaped our shared social, economic and political reality in the past and continues to do so in the present.

From this perspective, one could say that the labour reform in Mexico is ethically acceptable even with its associated social costs. Hard-hearted defenders of the utilitarian-inspired conception of development could argue that the goal of economic growth is so important that it can override other valuable goals, including the suffering of some for the sake of a general greater good (assumed to be captured by growth). In practical terms, this means that the relevance of any other social concern has to be justified in terms of its impact on economic growth. To put it in crude terms, as long as there is an increment in the economic arena, a state of affairs or a policy is positively evaluated from this perspective regardless of its impact on other potentially important social concerns such as inequality, discrimination, child mortality, education and so on, at least until they are proven to be counterproductive for the economy⁴. As a result, as Goulet (1997) laments,

³ This dissertation uses the generic term of ‘utilitarian-inspired notion of development’ to emphasise the practical implication of utilitarianism in development thinking and to distinguish it from utilitarianism as a philosophical doctrine.

⁴ For instance, recently, some studies from important worldwide organisations have emphasised the relevance of some of these social concerns in terms of their contribution to economic improvement (e.g. OECD 2014b; see also Ostry et al. 2014; for other OECD references, see <http://www.oecd.org/newsroom/inequality-hurts-economic-growth.htm>).

the study and practice of development are reduced to a 'technical examination of how to mobilize resources and people most efficiently and fashion the institutional arrangements best suited to growth' (p. 1160)⁵.

In recent decades, however, the pragmatic solutions offered by this approach have come under severe criticism from distinct corners of the world but for similar reasons. Ultimately, the growing discontent with the kind of structures promoted by this utilitarian-inspired view of development, its disregard for human diversity, the widespread inequalities around the world, as well as the type of social and environmental relationships shaped by this narrow view of development, have reignited an important debate about *what* development is and *how* it can best be achieved. The central point of this debate is to unveil the current disguise under which the notion of development has been trapped for so long and thrust it back into the ethical arena where it belongs, in order to challenge the human and environmental suffering for the sake of economic growth (Goulet 1971, p. vii cited by Des Gasper 2008; see also Goulet 1997, Sen 1988).

Hence, in contrast to the mainstream approach, which obscures the inextricable normative component of the concept of development, development ethics departs from the recognition that development cannot be detached from ethical judgements and normative valuations (Crocker 2008, 1991; Deneulin 2011b; Goulet 1980, 1997; Seers 1969)⁶. Both the object of development—*what* we aim for—and the means of development—*how* we get there—entail normative positions that ought to be ethically assessed. Any competing understanding of development carries with it certain kinds of social, economic, political and environmental policies which prioritise certain values and certain distributions of burdens and benefits in society over others, which in turn determine the kind of lives that people are able to lead. In this respect, the notion of development is inseparable from 'question of values...and criteria for determining what are tolerable costs to be born in the course of change' (Goulet 1997, p. 1161). Stated differently, development ethics is inseparable from questions of justice, that is, from concerns about how the benefits and the cost of social cooperation ought to be allocated and weighted in society.

⁵ In this respect, the utilitarian approach to development can be an example of the branch of economics that Sen (1987) calls the 'engineering' approach, which is 'concerned with primarily logistic issues rather than with ultimate ends and such questions as what may foster "the good of [wo]man" or "how should one live"' (p. 4).

⁶ See also Des Gasper 2008 for a summary of Goulet's work.

In this respect, the social challenges that afflict the world today pose a strong demand for changing the paradigm that places development in the narrow aisle of monetary evaluations. The literature of development ethics stresses the need for a framework that is able to counteract the legitimisation of social policies based solely on the utilitarian-inspired view of development as economic growth and to redirect social and political efforts towards a more just society.

This dissertation critically analyses to what extent theories and approaches to social justice succeed in providing this alternative framework. Following Amartya Sen's work *The Idea of Justice* (2009), this dissertation departs from the foundational idea that development cannot be detached from discussions about social justice. From the renewed perspective of Sen's work, development is a matter of advancing justice or reducing injustice. There is, however, still an important disconnection between the abstract nature of theoretical work advanced within social justice literature and the practical guidance it offers to design policies, institutions and political actions that are likely to be effective in reducing injustice. The literature of social justice still has a long way to go at this practical level. Therefore, the main object of study of this dissertation is the connection between the diagnosis of injustice and the conceptual framework needed to reduce it in practice.

Using the example of labour reforms in Mexico, the remainder of this chapter introduces the general ideas that subsequent chapters will examine in greater detail. Nonetheless, it is important to bear in mind that this chapter and the rest of the dissertation are discussed at a certain level of abstraction and thus the role of concrete examples within the context of Mexico is for illustrative purposes.

1.2 Why is a theory of justice necessary?

Discussions about justice have always been a warranted concern in human life, but it is the content of what justice entails that is never fully grasped. Still, justice usually refers to the ethical standard that determines 'how the good and the bad things in life should be distributed among members of a human society' (Miller 1999, p. 1 cited by Robeyns 2009a) and thus to ensure that everyone gets what they are due in terms of advantages and burdens. As mentioned earlier, utilitarian ethics in the form of development as economic growth has been the dominant

framework to settle these demands. In fact, one could say that this is well reflected in the National Development Plan of Mexico (2013–2018)⁷, which, despite making reference to other genuine concerns such as inclusion, human rights, and so on, shows that its main priority and most important end is that of reaching higher levels of economic growth which is seen as best realised through raising productivity⁸. Similarly, the justification of recent labour reforms based on their contribution to economic growth confirms further that Mexico, like many other countries, still relies on an understanding of development as economic growth, sometimes at the expense of great harm borne by some people. But is economic growth, or some other utilitarian-inspired metric, the highest end to which society should strive? Is it acceptable to sacrifice workers' rights for the sake of economic growth? More generally, is it acceptable that some pay the cost for the benefits that others will enjoy? That is, can development be disjoined from issues of justice? Stated more broadly, is economic growth prior to issues of justice?

Theories of justice aim at providing a systematic framework to think about these concerns and offer an answer to these kinds of questions. In this respect, John Rawls' major work *A Theory of Justice* (1971) signified the rebirth of social justice as a major social concern. His theory emerged as an explicit response to utilitarian ethics and its failure to adequately address the demands of justice. Despite being the target of countless debates and discussions on the topic (e.g. Brighouse and Robeyns 2010, Sen 2009, Nussbaum 2004, Sandel 1998, Mulhall and Swift 1992), Rawls' theory continues to be considered the most prominent work on political philosophy of our times (Brighouse 2004). As such, it can be regarded as (to paraphrase Rawls) the most reasonable conception of justice (instead of, for example, utilitarianism, perfectionism or libertarianism) according to our moral intuitions about what would be an ethically acceptable way to arrange society. In his view, a society would be best organised if it respected all individuals equally and treated them as ends in themselves rather than as means for another imposed end (e.g. economic growth). In broad terms, his theory defends two principles of justice: (1) *the liberty principle* (equal liberties for all) and (2) fair equality of opportunity and *the difference principle* (i.e. economic inequalities are tolerable only to the extent that they are for the benefit of the least advantaged

⁷ Available at http://www.dof.gob.mx/nota_detalle_popup.php?codigo=5299465.

⁸ The OECD 'Better Policies' report on Mexico (2012), called *Better policies for inclusive development*, expresses ideas almost identical to those of the Mexican National Development Plan.

members of society). Respecting these principles would make a society qualify as just.

In this way, Rawls' theory provides a systematic alternative framework to utilitarianism that can be useful for evaluating different social arrangements as well as social policies. For example, using his conception of justice, we can assess whether the labour legislation in Mexico could be ethically acceptable or not. The reform would be considered just if it were concordant with the demands of justice, that is, if it could be seen as a step towards—or at least not contrary to—the two principles of justice suggested above. Although it is not the purpose of this dissertation to offer a thorough analysis of the labour reform in Mexico, some basic information about the reality of the country is sufficient to show the non-alignment of the reform with the Rawlsian requirements of justice⁹.

In 2012, the year when the reform was approved, Mexico had 51.6% of the population living below the national measure of poverty. In 2014, this figure was 53.2% (World Development Indicators). Mexico is also one of the most unequal countries in the world; the last reported Gini coefficient (2012) was 48.1 on a scale of 0 to 100, where 0 represents perfect equality and 100 represents the situation where only one person possess all income (World Development Indicators). Similarly, according to the OECD's latest report on inequality (2015b), in Mexico, the average income of the richest 10% is 30.5 times greater than the average income of the bottom 10%. This measure is the worst amongst OECD countries and it has been getting worse over the years. In terms of social inequality, the country's Office of National Statistics (INEGI 2013) has recently categorised the majority of people as of low social class (59.1%) and a small minority as of upper social class (1.7%). Moreover, this inequality takes place within a country with extremely limited social mobility. If one is born in the lowest 20% of the social scale, the probability of remaining there is up to 50%, whereas about four (81%) out of five who are born rich remain so. Likewise, only 6 out of 100 people are able to perform a job that is different from the one their parents did (Vélez et al. 2013). These trends of social inequalities, the OECD (2015b) argues, can be explained by differentials in access to education, type of labour performed, and social security. These in turn can be related to discriminatory practices which have

⁹ Chapter VI offers a more comprehensive view of the context in Mexico and a brief account of Mexico's recent history.

been ubiquitous within legal, economic and social services in the context of Mexico since colonial times (CONAPRED 2012).

To appreciate the latter, take for example the first letter that Columbus sent from America to Ferdinand and Isabella of Spain. In the letter, Columbus wrote about the generosity and naivety of the 'Indians' who lived in the territory recently conquered and the ease of taking advantage of them and exploiting them (even if he warned against doing so):

They are content with whatever trifle of whatever kind that may be given to them, whether it be of value or valueless. I forbade that they should be given things so worthless as fragments of broken crockery, scraps of broken and lace tips, although when they were able to get them, they fancied that they possessed the best jewel in the world... I gave them a thousand handsome good things, which I had brought, in order that they might conceive affection for us and, more than that, might become Christians and be inclined to the love and service of Your Highnesses and of the whole Castilian nation, and strive to collect and give us of the things which they have in abundance and which are necessary to us¹⁰.

Even if these words are distant in time, the problem is that they remain worryingly accurate to describe several features of life in Mexico today. This historical 'accident' has become a constant process that is now well grounded in the social arrangement of society and proliferated by the way institutions are arranged and the interactions that take place within them. In other words, it is not surprising that an implicit understanding that certain people or groups of people can be 'used' for the sake of a 'bigger' goal (for example, that of advancing economic growth) erodes the political and institutional arrangements that have been adopted in Mexico, as in other countries throughout Latin America.

It can therefore be expected that these situations of poverty, inequality, discrimination and marginalisation in Mexico are found also in the job market. In this respect, Mexico shows very low historical levels of unemployment of 4.9% (World Development Indicators). Although this may sound like good news, the reality is not that good. Putting aside methodological difficulties related to the measurement of unemployment, Heath (2014) suggests that these low levels of

¹⁰ Available at <http://xroads.virginia.edu/~hyper/hns/garden/columbus.html>.

unemployment are the result of structural issues of the labour market in Mexico. Paradoxically, the highest levels of unemployment are amongst the highly educated whereas the poorest non-educated are most likely to be employed. This might be the result of their extremely impoverished circumstances, which force them to 'accept any type of work, no matter how little it pays' (Heath 2014, p. 3). Indeed, Mexico has one of the lowest minimum wages in Latin America—above only El Salvador and Nicaragua—and it is below the minimum necessary to afford the minimum basket of goods for one person; this means it is below the poverty line (Frente a la Pobreza 2016). This is despite the fact that Mexican workers record—on average—the largest number of hours worked per year amongst all OECD countries (OECD Data 2015¹¹).

In this context, it is to be expected that those at the bottom of the social scale can be disproportionately affected by the reform as a result of the 'flexible' and 'modern' labour relations, which, in effect, mean no job security and no social benefits. According to a thorough analysis of the reform, Bensusán (2013) concludes that there is a danger that this reform will exacerbate social inequality. As such, it is very hard to think that this policy—which in general terms reduces workers' protection while increasing employers' power—could be considered just under a Rawlsian framework, even if economic growth were actually promoted as a result of it¹².

Evidently, it is not possible at this stage to draw conclusions about the actual justness of the labour reform. Rawls himself acknowledged that his principles might not always hold for real-life circumstances. This will be discussed in more detail in chapter III; for now, what is important to realise is that a Rawlsian theory of justice allows us to evaluate these reforms from another stance in which justice is a priority. Under the current understanding of development as economic growth, the reforms are clearly justified. Yet this is only because there is an assumption that what a society should aim for is to increase economic growth. But if the goal of a society was something else, then it is not necessarily clear that the labour reform is ethically acceptable. From a Rawlsian perspective, for example, one

¹¹ 2237 hours compared with 1669 hours in the UK, for example. Available at <https://data.oecd.org/emp/hours-worked.htm>.

¹² In fact, given the last available data, this has not happened either. In terms of GDP growth, there was an important reduction from 4% in 2012 to 1.4% in 2013 and 2.2 in 2014, whereas in terms of GDP per capita growth it decreased from 2.6% in 2012 to 0.0% in 2013 and 0.9% in 2014 (World Development Indicators).

would ask: If we want a society that, at some point in time, honours the two principles of justice, would these labour reforms be acceptable?

For the sake of illustration, throughout this chapter it is assumed that the previous analysis does allow us to classify the legal document as unjust¹³. As such, one could argue that discussions about justice are essential for current debates about the proper way to arrange societies and thus for a normative framework of development aiming at promoting justice.

1.3 The need and the insufficiency of ‘nonideal’ theories of justice

As useful as a theory of justice can be, however, the literature on the topic has been recently criticised for being too abstract and detached from the actual circumstances of the real world and therefore far from influencing social policies that could have an effect on the situation of the world (Sen 2006, Wolff and De-Shalit 2007). Knowing that a state of affairs or a policy can be considered unjust does not in itself say anything about what kind of policies would be desirable and likely to be effective to improve the lives of millions of Mexicans, for example. In fact, some authors even suggest that the translation of these abstract theories into actual policies can even be counterproductive (e.g. Phillips 1985). It is thus not entirely clear where the usefulness of a theory of justice lies for the practical aim of reducing injustice; and some even question whether they are necessary at all. Hence, one could argue that, at best, this Rawlsian-like theorising—called *ideal* theories—can shed light only on what a perfectly just society would look like but that they do not offer much guidance about how to get there.

For this reason, recent literature highlights the need for developing a more practical conception of justice for the real circumstances of the world (Sen 2006, Schmidtz 2011). It advocates for a *nonideal* framework capable of informing the design and implementation of social policies likely to be effective in the real world. Sen’s *Idea of Justice* (2009) emerges as a response to these demands and at the same time links considerations of justice with development practice. In his work, Sen argues against what he calls the ‘transcendental’ view of justice (i.e. ideal

¹³ For instance, this can be on the ground of Rawls’ ‘general principle’, which he suggested could not be transgressed under any circumstances. It says that social reforms and courses of action are ethically acceptable if and only if they are for the advantage of all and, especially, for the benefit of the least advantaged of society (see Culp 2015, Fuller 2012).

theories aiming at defining what a perfectly just society is) and takes as his starting point a shared notion of injustice in the world and the urgency to remediate it. As such, Sen (2009) aims at proposing a workable approach to reduce injustice in the world, for which, he affirms, the information provided by ideal theory is practically irrelevant.

In essence, the core idea underlying Sen's approach is the notion of advancing justice via people's freedom and public reasoning. He argues that given the practical demands that development concerns entail, what is needed to start making the world more just is a comparative framework capable of ranking different suboptimal social arrangements as more or less just. This ranking in turn should be focused on people's capabilities to *do* and *be*¹⁴ (see Sen 1999a, 1990, 1985, 1980). From this perspective, a social arrangement where individuals enjoy more capabilities or have less capability-deprivation is more just than another. Finally, Sen insists, these capability enhancements should be the product of inclusive public reasoning between individuals. In this way, justice is enhanced if individuals enjoy more capabilities as a result of public deliberation. But is this a useful framework for orienting action in practice, as it claims to be?

Placing Sen's approach in the context of the labour reforms in Mexico would imply that, first, one would have to agree (even if for different reasons) that labour practices were unjust in order to motivate action to remedy it; otherwise, Sen's comparative framework would have no say on that matter. Were it the case that the labour market were unjust with respect to some valuable capability-deprivation, then the new labour reform would have to be publicly discussed to then agree on a solution that expands people's capabilities. The problem arises once one realises that there is nothing in Sen's proposal that can avoid accepting the (utilitarian-inspired) labour document exactly as it is, and even worse, to legitimise it as a justice-enhancement reform once it passes the test of public deliberation (as happened to a certain extent in Mexico). For instance, after public discussion, the legal reforms could have been accepted because it enhances people's (men's and women's) capability to work due to the increased attractiveness and ease for enterprises to employ more people on account of the flexible 'modern' labour relations. This possibility can be consistent with what

¹⁴ Capabilities are defined as the real opportunity (freedom) someone has to choose between (any) different combinations of *beings* and *doings* (i.e. what Sen calls functionings) that he or she has reason to value.

Sen's comparative proposal would consider justice-enhancement arrangements, as long as these proposals emerged from 'public' discussion.

This brief account points towards one of the arguments developed in this dissertation, namely the insufficiency of Sen's approach to reduce injustice on its own. For irrespective of its merits, a nonideal theory would still need to prove that its produced outcomes are in line with an ideal of justice. This dissertation therefore advocates for the complementarity between Sen's comparative approach and Rawls' ideal theory and analyses whether this 'dual framework' provides a useful theoretical approach to promote justice in practice. This dissertation advances (a) that critically reflecting on the connection between these two approaches and the kind of practical guidance that a dual framework can provide is intrinsically important for the aim of constructing a more just society and (b) that this is independent of and different from the theoretical exercise of finding the best metric to evaluate justice. This is where the main contribution of this dissertation lies since this reflective exercise has received much less attention in the literature.

1.4 The need for a relational idea of injustice

Sen's move to a more practical theorising of justice represents a much-needed step in the direction of bringing theories of justice to inform injustice-reduction interventions or policies. He pertinently recognises that it is necessary to shift the almost exclusive focus of political philosophers on ideal theorising to a focus on the urgent matter of reducing injustice. For the latter, Sen identifies that positive change has to occur in gradual steps through comparative merits and that this process has to be carried out via public discussion and inclusive participation, amongst other things. Nonetheless, it is not at all clear how, even if coupled with an ideal theory, these changes can actually be attained. In other words, although Sen aims at presenting a more practical theory to reduce injustice, the problem is that there is simply no real guidance about how these normative ideals can be translated into practice in specific unjust social realities. But if the aim of reducing injustice is taken seriously, it is imperative to reflect on how these normative ideas ought to be operationalised in practice, even if at a very general level. Failing to do so is opening the door for the co-optation of the approach and the usurpation of the language of justice for political or private interests. This is equivalent to

becoming accomplices in perpetuating injustice. It is the role of development ethics to critically reflect on this issue to provide richer theoretical clarification and better practical guidance. This implies that there is a need for an extra level of theorisation to render theories of justice fitter for practical purposes.

This dissertation is thus in line with other scholars who recognise distinct 'dimensions' or 'layers' of normative justice (e.g. Gilabert 2008, Robeyns 2008). However, the emphasis in this dissertation is slightly different. For example, Robeyns identifies three layers of normative justice: ideal theory, nonideal theory, and action design and implementation. The main difference is that she associates the last layer with empirical research. In contrast, the point in this dissertation is not to further highlight the empirical aspect or the need to look at specific realities and understand their particularities in order to suggest exact concrete policies. Neither does it perform the empirical exercise of finding causal or inferential connections between specific policies and their overall outcome in people's capabilities. Although both of these exercises are valuable, this dissertation follows a different route. It presents a theoretical exercise at a more general level for the purpose of gaining deeper theoretical clarification between layer two and layer three of Robeyns' typology. This can be seen as a previous reflective step that can be of great utility for orienting the practical efforts of action design and implementation. In this sense, this dissertation can be associated with the nonideal aspect of transitional justice.

This dissertation therefore assesses the contribution of normative justice in relation to the kind of guidance that it is likely to inspire for injustice-reduction interventions. It argues that ideal and nonideal theories—such as Rawls' theory and Sen's approach—remain insufficient for ensuring adequate political guidance to transform unjust realities because of their failure in adequately diagnosing/appraising injustice and its reproduction in the real world. This, in turn, highlights the need to further complement this dual framework with a conception of injustice. In particular, it emphasises the need to move from a narrow conceptualisation of injustice, understood simply as the lack of justice (i.e. lack of capabilities), to a more dynamic and relational one. This move endows a dual framework with a more accurate diagnosis of the relational nature of injustice, which in turn broadens the scope of normative judgement to the intersubjective mechanisms that reproduce injustice.

For example, this would point out that behind an unjust case of capability-deprivation suffered by some people, there are some 'hidden' (and sometimes not-so-hidden) social and relational processes that vindicate such a situation. To illustrate, in the case of the labour reforms in Mexico, one could argue that there are two distinct factors at play. On the one hand, it can be argued that at its core lies a sincere expectation of its positive economic impact for the country. On the other hand, there is also a less evident aspect which can be related to specific social mechanisms in Mexico that render the wellbeing and liberties of certain people (those who will be affected) less valuable than the expected outcome of higher levels of investment and economic growth for the country. It is the latter aspect which may not be adequately grasped by Sen's comparative approach. Unfortunately, it is a pattern that can be found in multiple cases and different scenarios.

This is well captured in a recent film about the struggles experienced in Bolivia in the year 2000, when there was an attempt to privatise the provision of water, including—to some extent—rainfall. This episode is known as *La guerra del agua de Cochabamba* (Cochabamba's Water War). This policy was promoted by the World Bank and was highly supported by the government despite the knowledge that this process would lead to an inevitable increase in prices that would leave many of the country's poorest citizens without this vital resource. In one scene, the prime minister responds to one of his foreign guests, who challenged the government's position about the social protests taking place in the streets below and about the conditions in which the poorest people lived:

Perhaps if you were better informed... In a country with few resources it is hard to maintain a water supply without major foreign investment. These people think that government money grows on trees, and given their long history of exploitation, Indians' distrust is embedded in their genes. It is difficult to reason with them, especially when they are illiterate. But that is how it is. We have objective reports from Harvard professors, the IMF [International Monetary Fund]... In this globalized world the Indians burn water bills and hurl rocks at the police. It is the cult of victim versus modernity... (*Even the Rain* 2010).

This dissertation argues that it is these kinds of institutionalised patterns of beliefs, attitudes and behaviours, and their reproduction, which makes and maintains a

society unjust. It shows that a Rawls/Sen dual framework of justice is incapable of fully appraising the reproduction of injustice in its intersubjective form. Consequently, a framework capable of accounting for it is also needed to complement Sen's idea of justice to effectively guide political action. In other words, just as nonideal theories need an *objective* (identified by ideal theory) where to aim, they also need a *ground* to depart from (i.e. a relational understanding of injustice). In the absence of this ground, Sen's nonideal approach lacks the power to address the social mechanisms (people's actions and interactions) that maintain the unjust status quo and its perpetuation over time. Ultimately, this implies that enhancing human capabilities does not necessarily translate into a more just society. In contrast, this dissertation contends that in order to create a more just society, we need to go beyond the removal of capability-deprivations that people suffer, by broadening the scope of injustice-reduction policies to also address the ways in which injustice is reproduced through social interactions.

1.5 Constructing a more just society: Sen's *Idea of Justice* and the reproduction of injustice

For many decades, the utilitarian-inspired thinking of development has dominated many of the economic and social policies around the world, but in recent decades, normative ideas of justice have reinvigorated the much-needed political and social debate about how a society should be organised. In this process, normative ideas of justice have forcefully challenged common understandings of social progress and development associated with the utilitarian school of thought. Nonetheless, although the literature on social justice is extensive, it has fallen short of providing a systematic conceptual framework to inform the advancement of justice or reduction of injustice in the world through political action. Yet unjust social realities, such as rising levels of inequality, marginalisation, exploitation and domination around the world, urge the academic world to move forward the highly theoretical work of justice in the direction of actual practical guidance to transform people's realities into a more just society.

It is precisely this urgency for making the world more just, or less unjust, which lies at the core of Sen's recent work on justice (Sen 2009, 2006). Sen's work on the capability approach is already a very successful conceptual framework for

thinking about development and issues of justice¹⁵. At first, it emerged solely as a better alternative space for assessing individual wellbeing than other, competing approaches such as utilitarianism and resource-based measures, rather than as a theory explicitly aiming at guiding the social arrangement of society. In *The Idea of Justice* (2009), however, Sen further develops his capability approach to become part of a broader conception of comparative justice. In it, Sen aims at offering a practice-oriented idea of justice capable of guiding actual policies in the real world. Its main aim is ‘to clarify how we can proceed to address questions of enhancing justice and removing injustice’ (Sen 2009, p. ix) ... ‘for which the identification of fully just social arrangements is neither necessary nor sufficient’ (Sen 2009, p. 15).

The overall purpose of this dissertation is to critically analyse Sen’s proposition. It asks to what extent it succeeds in presenting a useful practical framework for reducing injustice as it claims to do. The discussion will focus on two main areas: (1) the claim that it can be a self-sustained framework of justice and (2) the expediency of the kind of guidance it can provide for reducing injustice. In line with Sen’s concerns, this dissertation does not engage directly with theoretical reflections on what a just society is, but with the theoretical question about how justice can be promoted in practice—although it will argue that the former remains essential for the latter. In addition, it takes the theoretical exercise of advancing justice to a higher level of application. It is directly concerned with the applicability of normative ideas of justice. To do this, it engages in theoretical discussions with different approaches to justice and critically reflects on the way in which this normative work can better assist the aim of reducing injustice in practice.

To develop its central argument, this dissertation asks the following: What is the usefulness of normative ideas of justice for development practice aiming at reducing injustice? To what extent does Sen’s approach to justice succeed in offering a practical framework for reducing injustice in the real world? What kind of guidance does Sen’s idea of justice offer to inform injustice-reduction interventions in the real world?

¹⁵ The capability approach has been developed by several scholars, and for distinct purposes, the emphasis on development and issues of justice is justified for the purposes of this dissertation. Yet the capability framework has proven to be a very useful normative framework for evaluating social arrangements, designing social policies, guiding international development efforts, and so on. (See Deneulin 2014b for references of different ways in which the capability approach can be used; see also Robeyns 2009a, 2005.) The capability approach is widely flexible to be used and developed in very different ways (see Robeyns 2016).

This dissertation provides possible answers to these questions and presents implications of its argument for political guidance to tackle injustice in the context of poverty alleviation in Mexico. Overall, this dissertation finds that the literature on social justice is overly concentrated on the specification of what justice entails (ideal theories, e.g. Rawls 1971) or in the remedial actions needed if some advancements are to be achieved (nonideal theories, e.g. Sen 2009) or both. Yet both theoretical exercises remain entirely normative and thus detached from specific social contexts where injustice takes place. This analytical detachment from the social context where injustice occurs, however, renders both approaches insufficient for examining injustice in the real world and thereby for offering adequate guidance to remedy it. To overcome this difficulty, a broader conceptualisation of injustice is needed. Insights of other approaches outside the liberal philosophical tradition, namely critical theories, will provide this.

In developing its argument, this dissertation aims to provide a comprehensive normative framework for thinking about the reduction of injustice in practice. It is comprehensive because it does not adopt or defend a particular approach; rather, it takes central tenets of different approaches to justice and organises them in a way that highlights the strengths of each approach and compensates their weaknesses. It shows that in order to reduce injustice effectively, a comprehensive framework should contain three components: (1) an *ideal theory* of justice concerned with the definition of *what* justice is (to know what we aim for, to systematically identify injustice, and to rule out unjust means in the process of advancing justice), (2) a *nonideal theory* of justice to identify *how* to move in the direction of justice (that is, to identify the necessary mechanisms through which justice can be advanced in the real world), and finally (3) the need for a *relational conception of injustice* in order to provide a ground from *where* the scope of injustice-reduction interventions ought to depart (it provides a more accurate diagnosis of the unjust context and its reproduction).

The analysis presented in this dissertation will be entirely theoretical. This is because in order to provide better practical guidance, a clear theoretical frame of reference and adequate normative scope are needed. This dissertation is an initial step in that direction. Chapter II introduces ideal theories using Rawls' theory of justice as the main example of an ideal theory. It clarifies the scope of ideal theories and sets the structure under which subsequent chapters are discussed. Chapter III clarifies the distinction between ideal and nonideal theories and

underlines the insufficiency of the former in effectively guiding political action for specific unjust realities. This chapter also introduces the first part of Sen's *Idea of Justice* and, in particular, his critique against 'transcendental' theories which can be seen as his 'point of departure'. Chapter IV scrutinises Sen's comparative and conceptual framework (what the dissertation calls his 'methodological proposal') and reaffirms the claim that on its own it cannot deal with injustice adequately. It concludes by suggesting a dual (Rawls/Sen) framework. Chapter V analyses Sen's approach as a formal nonideal theory (i.e. as part of a dual framework) and the kind of guidance it can command in practice and concludes that it does not succeed in offering a practical framework for transforming unjust realities. Finally, chapter VI uses the poverty-reduction programme in Mexico to illustrate the theoretical arguments presented in this dissertation.

PART I.

II. Rawls' ideal theory of justice

Development can be understood in many different ways¹⁶, but even contrasting ideas usually have at their very core a notion of improvement. Broadly speaking, development can be identified with a transition from one state of affairs to another that is better in some meaningful way. What is not clear is what the content of the word 'meaningful' should be and how it can be appraised. Yet the answers to these questions matter greatly for they determine much of how a society is organised. By shedding light on (1) what a society should aim for and (2) the informational basis used to assess it, they also determine how these goals are pursued. This in turn also determines how the burdens and benefits of a society are distributed and what the relevant burdens and benefits are. In this sense, development is always about issues of justice. What vary among different understandings of development are what justice entails and the place that justice has in the arrangement of societies. The problem with the dominant (utilitarian-inspired) notion of development is that it provides an inadequate answer to what society should strive for. In addition, the guidance it offers to attain its goal of economic growth results in unacceptable burdens for some and excessive benefits for others. Hence, issues of distributive justice can be belittled and, as such, from this perspective, the social 'improvements' of development can justify injustices. This is why a growing number of scholars have been questioning utilitarianism as a defensible moral basis for guiding development efforts in societies since the second half of the previous century (e.g. see Sen and Williams 1982).

This chapter introduces the first component of a comprehensive three-level framework of justice: an ideal theory of justice capable of systematically informing us what justice entails and why utilitarian notions of development are not ethically acceptable unless it is consistent with the demands of justice. The chapter addresses three points: first, it discusses the practical relevance that an ideal conceptualisation of justice has for the purpose of promoting justice in the real world; second, it examines why it has to work within the boundaries of ideal theories; and, third, it argues why justice, and thus development, requires the

¹⁶ See, for example, Hettne (2009) and Rist (2008).

priority of the individual. To do this, this dissertation takes the most important contemporary work of moral and political philosophy as an illustration of an ideal theory, namely Rawls' *Theory of Justice* (1971). This is justified for the following reasons: (1) it successfully highlights the utilitarian deficiencies as a way to arrange societies, (2) it provides a reasonable framework to define what justice is in a systematic way, and (3) it is relevant to all contemporary discussions about justice (Robeyns 2009a) and especially to Sen's work. Given the structuring role that ideal theory plays in the development of the whole argument of the dissertation, some aspects of Rawls' theory will be covered in more detail than others.

The chapter begins by presenting how this dissertation understands ideal theory and then provides an overview of Rawls' theory, the reasoning behind his proposal and his conceptualisation of justice. Then, the chapter provides a more detailed analysis of Rawls' theory while considering a general critique to it. This has the dual purpose of showing its idealness and its effective justification of the priority of the individual as the ultimate object of moral concern.

2.1 Justice as ideal theory

Before one analyses a specific ideal theory of justice, it is important to clarify briefly what is meant by 'ideal theory' and the role it plays in the advancement of justice. This is particularly important given that there is no agreement in the literature on what it is exactly that renders a theory of justice to be classified as *ideal* (e.g. see Stemplowska and Swift 2012; Hamlin and Stemplowska 2012; Valentini 2012, 2009; Swift 2008). Thus, the concept of ideal theory is still a fuzzy one. As a result, what is expected from ideal theories will usually depend on the specific understanding of the term¹⁷. Despite some differences in the literature, this dissertation finds that ideal theories can be broadly characterised by two simultaneous features:

¹⁷ The margins between the distinct components (or levels) of the comprehensive framework (ideal, nonideal, and the ground of injustice) in this dissertation can also be blurry at times. Yet for analytical purposes, it is useful to distinguish between them in a clear-cut fashion.

- 1) Ideal theories are mainly concerned with the identification of the nature of fundamental values that we ought to pursue to the extent we can. In the case of justice, ideal theory tells us what a just society looks like.
- 2) The development of the principles of justice is, to a certain extent, independently justified from historical, institutional, feasibility concerns and the constraints of human nature.

Both of these characteristics have to be fulfilled by a theory in order to be considered an *ideal* theory. This is due to the recognition that there can be a plurality of values that may work as ideals (as in the everyday use of the word) within one society without satisfying the second characteristic (that is, without being independently justified). For example, some ideals can be entrenched within the traditions of societies, and although they can orient behaviour and social decisions, these are not necessarily independently justified. One of the problems with these cultural ideals is that they may lack a critical stance from which to evaluate the values that certain practices espouse (Sandel 1998). There can also be situations in which distinct fundamental values clash with each other. For instance, most modern countries are characterised by desires of equality, freedom, democracy and material prosperity but have not been successful in finding an adequate ordering of these. Therefore, to paraphrase Rawls (1996), it is when these first-order or entrenched ideals are in dispute with or clash with others that we need a *fundamental* ideal theory (that fulfils the two conditions) to try to settle these disputes. Theories of justice provide such a level of abstraction to serve this purpose and it is in this fundamental sense that this dissertation employs the notion of ideal theory.

The two features of ideal theory, nonetheless, are expressed in its most general form so that there can be some differences in the degree that they are fulfilled by distinct theories. For example, there are some authors who defend a 'purist' view in which the development of principles of justice cannot be constrained by making any reference at all to human features or to any fact of the world as we know it (e.g. see Cohen 2003). Yet other authors, though generally unconstrained by feasibility and human constraints, do take into account some facts (even if they are of the most general kind) of the world as we know it (e.g. Rawls 1971). As Valentini (2011) puts it, the difference between these two strands is that some authors believe that normative theories of justice must inform what we ought to

think and that others believe that it must inform what we ought to do (see also Robeyns 2008). This dissertation does not participate in this debate. However, given its practical purpose of presenting a comprehensive approach for ‘advancing justice in practice’, it takes the moderate version to illustrate this ideal level of theorisation¹⁸. To this end, Rawls’ theory of justice offers a well-suited approach. He believed in presenting a ‘workable conception’ of justice that could be considered a ‘realistic utopia’ (i.e. the best we can realistically hope for, ‘taking [wo]men as they are and laws as they might be’ [cited by Simmons 2010, p. 7]).

One should also note that within the definition of ideal theory, there is no explicit requirement for an ideal theory to be practically useful here and now. This means that an ideal theory cannot be asked to be applicable to, or offer a readily practical solution in, real-life situations. Although ideal theory may offer some guidance (e.g. see Boot 2012, Valentini 2009), this is not a requirement that can be demanded from an ideal theory to be considered useful and desirable on the whole. The role of ideal theory is that of ‘specifying ideals’ (Hamlin and Stemplowska 2012, p. 53)¹⁹, thus illuminating what makes a society qualify as just. In doing so, it also provides a framework to systematically and coherently determine whether a situation or a state of affairs is inconsistent with the demands of justice. That is, a Rawlsian framework can be used to evaluate whether a real-life situation or social programme, such as the Mexican labour policy, runs counter to the ideal that ought to be pursued and thus the framework can be used to demand its rectification. Ideal theory thus has two practical contributions: (1) by identifying injustice, it calls for action; and (2) it sets an objective where to aim at. But it does not necessarily say anything about how to remedy an unjust situation or how to move in the direction of a just society (see also Robeyns 2008).

Now that we have an initial idea of what is expected from an ideal theory and thus under which standard to assess its usefulness, this dissertation presents Rawls’ theory of justice and its justification. This should clarify why a specification of justice has to be developed as an ideal theory, how Rawls fits within its boundaries, and why justice has to be concerned with the lives of *all* individuals and not with an externally imposed end such as economic growth. (Even if—at

¹⁸ It is also this moderate form of ideal theory which is discussed in the ideal/nonideal debate. Moreover, if nonideal critiques find this moderate version of ideal theory to be questionable for practical matters, then the extreme version of ideal theory is even more problematic.

¹⁹ In this dissertation, ideal theory is conceptualised as something closer to what Hamlin and Stemplowska (2012) called the ‘theory of ideals’.

least in some countries—economic growth might be indispensable, this does not justify its supremacy.)

2.1.1 Rawls: The rebirth of ideal justice

The discussion presented in this section and the following ones is in no way comprehensive, either in the depth or in the breadth of the arguments that can be found in the literature. This is because the aim of this dissertation is *not* to cover Rawls' theory in detail or to defend it against certain critiques. Instead, only the 'idealness' behind Rawls' whole proposal is of interest for its purposes, and this is mainly covered in *A Theory of Justice* (1971, abbreviated as TJ from now on²⁰). Hence, this dissertation relies primarily on that work; however, when appropriate, it uses other references from the same author to complement or clarify an idea.

Rawls was determined to develop a conception of justice that could be presented as a 'reasonably systematic alternative to utilitarianism' (TJ, p. xi) and consequentially to place the virtue of justice as a primary matter of concern within political and moral philosophy. The decades after the first publication of *A Theory of Justice* have confirmed that—to a certain extent—he was successful in both of these motivations. Utilitarianism is the main target of his work because of the prevalence of this school of thought and its influence in the arrangement of societies and in moral philosophy in the last few centuries. In general terms, utilitarianism holds that what we ought to do is that which generates the greatest good for society, where the 'good' is usually expressed in some form of pleasure such as happiness or preference satisfaction, which in turn is captured under the notion of utility. Although there are different forms of utilitarianism (e.g. see Sen 1980, 1985; Nussbaum 2011a), Rawls focused on 'utilitarian thought generally and so to all... different version[s] of it' (TJ, p. 22).

Rawls' TJ compellingly argues that the utilitarian doctrine fails to guarantee an essential requirement of justice, namely being fair to all individuals by respecting them equally. Specifically, Rawls finds himself at issue with utilitarianism for two interrelated reasons. He believes that, first, utilitarianism is not capable of

²⁰ All direct quotes referring to Rawls' *Theory of Justice* will be represented only by TJ, followed by the page number in parenthesis (e.g. TJ, p. iii). They refer to the first edition (1971) unless stated otherwise.

seriously taking into account the distinctness between persons and, second, as a consequence, utilitarianism is not able to protect the basic rights and liberties that individuals are entitled to if they are to be conceived of as free and equal. Indeed, strictly speaking, under the practical logic of utilitarianism, rights and liberties are valued as far as they serve the first priority of maximising some form of social utility (e.g. via economic growth), no more. That is, as the example of the Mexican labour reform illustrated, workers' rights, workers' safety, and so on are subordinated to the goal of rendering the company/society more productive. On the contrary, Rawls sees justice as 'uncompromising' (TJ, p. 4), as 'the first virtue of social institutions, as truth is of system of thought' (TJ, p. 3). This view of justice has the main purpose of respecting equally every individual's rights and liberties and thus of rejecting the utilitarian justification that the sacrifice of some human beings can be compensated by the greater advantages enjoyed by others.

From Rawls' perspective, justice is the ideal that ought to guide the arrangement of society. As such, Rawls' formulation defends the moral primacy of justice and individuals' rights over other values and ends (Mulhall and Swift 1992). But before we turn to more foundational features of the theory, it is necessary to overview the theory²¹.

2.1.2 Rawls' *ideal* theory of justice: An overview

TJ seeks to define what a just arrangement of society is. To do this, Rawls considers that the subject matter of justice should be 'the basic structure of society' (TJ, p. 3), understood as all major social institutions held together as a scheme, which include the political constitution and the principal economic and social arrangements (including the family²²). The reason for focusing on the basic structure of society is that it is where the basic rights and duties and the benefits and burdens of social cooperation are distributed (TJ, p. 6). Rawls further advises that the focus of a theory of justice should be on 'the major institutions' because of the pervasive influence that this structure has in shaping people's 'life

²¹ See Rawls (1971, 1977, 1980). For other useful reviews of Rawls' life and work, see Pogge and Kosch (2007), Kilcullen (1996), Richardson (2008), and Wenar (2008).

²² See Rawls (1999) for his discussion of the family. However, in a previous article clarifying the idea of 'the basic structure of society', Rawls does not mention the family as part of it (Rawls 1977). Hence, the place of the family within the basic structure has been a controversial topic. See McKeown (2015, chapter V) for a discussion about the implications and difficulties of including the family in Rawls' basic structure of society (see also Okin 1989, Valentini 2009, Nussbaum 2011b).

prospects, what they can expect to be and how well they can hope to do'. In Rawls' view, it is the cumulative of these institutions which is responsible for determining a person's expectations of what his or her entitlements are, as well as their 'initial chances in life' from the instant, and the place, in which someone is born (TJ, pp. 6–7). It is the role of justice, then, to mediate structural outcomes that result in unequal life chances and distorted understandings of people's entitlements and duties that favour certain social positions at the expense of others.

Similarly, it is precisely because of the deep inescapable influence of the basic structure in our view of the world and the great distinctness of people that the principles of justice—under which all other states of affairs are to be assessed—must not be influenced by the specificities of current social circumstances. Rawls (1977) writes:

Agreements reached when people know their present place in an ongoing society would be influenced by disparate social and natural contingencies. The principles adopted would then be selected by the historical course of events that took place within that structure. We would not have gotten beyond social happenstance in order to find an independent standard (p. 161).

Hence, in order to avoid favouring particular social positions or certain conceptions of the good, an ideal conception of justice has to be derived by rational people under conditions of freedom and equality for all. These are the main conditions that Rawls considers necessary if principles of justice are to be fair and acceptable to everyone. This is exactly what he aims to accomplish through the two core ideas of his work: the original position and the veil of ignorance. Rawls presents the 'original position' as a hypothetical situation where individuals are able to decide and agree on the principles of justice to regulate society. Meanwhile, the 'veil of ignorance' is the necessary condition that facilitates the possibility for persons to recognise each other as moral persons equally situated and free. That is, the veil of ignorance is a heuristic device that invites us to put aside all personal characteristics and social circumstances such as our position in society, socio-economic situation, race, gender, skills, as well as our conception of the good, and so on, when placed in the original position. Hence, when the two concepts are placed together, the original position and the

veil of ignorance depict a situation where persons are considered equal and free. They are free in two senses: free *from* social contingencies and free *to* choose (the principles of justice).

In this way, Rawls meets the necessary moral conditions for fair principles of justice to be accepted by individuals under *ideal* conditions. However, to reach an agreement, there is some information that the parties in the original position must know. For example, why there is a need for such a contract between them in the first place, what their motivations are when deliberating with others, and what exactly it is that they are to agree on. So far, only what the parties *do not* know in the original position has been described (i.e. their personal characteristics and their conception of the good), but if the parties do not know what the good is that they are seeking, then it is not clear what they can bargain about in the hypothetical situation. To complete the reflective exercise, Rawls suggests the following scenario. First, in the original position, the parties assume that society, for which the principles of justice are going to apply, is characterised by the 'circumstances of justice'. These are the 'normal conditions under which human cooperation is both possible and necessary', which is marked generally by a conflict of interests on the division of social advantages where moderate scarcity of material and natural goods prevail (TJ, pp. 126–127). Second, the parties in the original position are conceived as rational ('taking the most effective means to given ends'; TJ, p. 14) and mutually disinterested (i.e. they try to advance their own interests in absolute, rather than relative, terms). Rawls explains further:

The intention is to model [wo]men's conduct and motives in cases where questions of justice arise. The spiritual ideals of saints and heroes can be as irreconcilably opposed as any other interests. Conflicts in pursuit of these ideals are the most tragic of all. Thus justice is the virtue of practices where there are competing interests and where persons feel entitled to press their rights on each other. In an association of saints agreeing on a common ideal, if such a community could exist, disputes about justice would not occur... But a human society is characterized by the circumstances of justice...[the] aim is to reflect in the description of the original position the relations of individuals to one another which set the stage for questions of justice (TJ, pp. 129–130).

Third, in terms of the participants' motivation, Rawls conceives them as 'moral persons', that is, as having the capacity to be rational and reasonable. A moral person is rational in the sense that she has the capacity to form, revise and pursue a conception of the good and is reasonable in so far as she has a capacity for a sense of justice. It is, then, their 'highest-order interests' (Rawls 1996, p. 75)—their two moral capacities -, along with their unknown conception of the good that the parties aim to secure for themselves in the original position. Finally, although the parties do not know what their ends will be, they do know that there are useful things called 'primary goods' that they need in order to advance their ends and moral capacities. These goods are defined as things that any rational person would want irrespective of her rational ends. Therefore, the parties would rationally prefer 'more of rather than less' (TJ, p. 92) to ensure their success in advancing their highest-order interests whatever their conception of the good may be. The primary goods include rights and liberties, opportunities, income and wealth, and the social bases of self-respect.

In sum, Rawls' TJ aims at modelling the relevant moral conditions to determine which principles of justice would be agreed to in a hypothetical situation where human beings are represented as free and equally situated. Under these ideal conditions, Rawls claims, the resulting principles will provide the most fair, stable and reasonable conception of justice, in comparison to other alternatives, to arrange the basic structure of society. These principles are the following:

- (1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
- (2) Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged (the difference principle) and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

In addition, Rawls suggests an ordering between these principles which emerge from the original position. The first principle, namely equal liberties, has lexical priority over the second, and part (b) of the second (equal fair opportunities) has priority over part (a) (the difference principle). According to Rawls' ideal theory, then, the compliance of these two principles is what a perfectly just society would

look like. That is, these ideal principles are the standard under which all other social arrangements and states of affairs ought to be assessed²³.

This lexicographical order of the principles, however, is derived strictly for ideal circumstances of a well-ordered society. According to TJ (pp. 4–5), a society is well ordered if (1) everyone accepts and knows that the others accept the same principles of justice and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. Yet for the present conditions of real-world societies, the priority order may no longer hold (TJ, p. 245, 303; see also Culp 2015, Goodin 1995). Still, Rawls advises that they do have the purpose to guide and be relevant for guiding current societies ‘as far as circumstance permit’ (TJ, p. 246). The next chapter shall take this discussion further²⁴. As will be clear, however, for the specific purposes of this dissertation—namely to analyse the practical usefulness of normative ideas of justice to orient political action and, more specifically, to scrutinise Sen’s proposal on that endeavour—it is only the ideal aspect of Rawls’ TJ that is relevant.

In this regard, it is important to note that, with these two principles, Rawls provides an alternative moral foundation to utilitarianism in determining the endpoint which society should strive for. This in turn provides a distinct basis for our understanding of development, which has very important implications. From this perspective, for example, a larger share of social utility is no longer enough to count as ‘meaningful’ social improvement unless it is consistent with the demands of justice. That is, a social arrangement where its major institutions are organised to maximise the end of economic growth (as a proxy of social utility) at the expense of individuals’ rights or liberties is unjust and thus must be transformed. According to Rawls’ principles of justice, ‘[e]ach person possesses an inviolability

²³ Since its publication, Rawls’ TJ has been widely scrutinised and criticised from different points of view. Reviewing the Rawlsian literature is beyond the scope of this dissertation. Therefore, it does not engage in an extensive examination of the entire literature, not even of Rawls’ corpus. In relation to Rawls’ work, see *Political Liberalism* (1996) for a refined presentation of his theory; other clarifying works of his theory include Rawls (1980, 1977, 1974); see *The Law of Peoples* (2000) for his thoughts about global justice. For critiques to Rawls’ work, see, for example, Okin (1989) for a feminist point of view; see Brighouse and Robeyns (2010) for a debate about the metrics of justice between Rawls’ primary goods and the capability approach; see Nussbaum (2006) and Richardson (2006) for discussions about the difficulty of Rawls’ theory to deal with some groups, such as the severely disabled (see also Robeyns 2009b for other references); see Nussbaum (2004), Sen (2006) for issues of global justice; see Nozick (1974) for a libertarian critique; see Sandel (1982) and Mulhall and Swift (1992) for communitarian critiques; see Valentini (2012) for different lines of critiques to Rawls’ work related to the ideal/nonideal debate; see Young (1990) for a critique related to identity from the critical tradition and Kymlicka (1995) for a similar stance from the liberal tradition of multiculturalism.

²⁴ The next chapter discusses the distinction between ideal and nonideal circumstances.

founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others' (TJ, p. 3).

To be just, then, a society ought to be organised in a way that safeguards Rawls' principles of justice: equal civic and political liberties to all individuals and 'economic schemes that work to the greatest benefit of the worst off against the background of fair equality of opportunity' (Gilbert 2008, pp. 412–413). Under this new ideal, the social improvements of development would entail moving in that direction. For example, a Rawlsian perspective of a basic structure of society would require that a labour reform be considered successful on the basis not only of the economic benefits it generates but also of whether it respects workers' rights, whether it promotes equal opportunities for workers to thrive, and whether its distribution of profits works for the advantage of the worst off. Stated in a different way, a social arrangement is ethically acceptable if and only if it treats all individuals as ends in themselves and thus it secures the two principles of justice. What Rawls' theory implies is that, if development ethics is concerned with justice, then development has to be about the individual and her freedom to pursue her life plan.

The centrality of the individual for considerations of justice is critical to understand Sen's position on development and justice (chapters III and IV). However, it also requires further clarification because it is less straightforward than often assumed in the literature and/or because it does not always mean the same for different scholars and thus it might have different implications for development²⁵. It is in this spirit, then, that the following section introduces Rawls' justification of the priority of the self for matters of justice. It shows that a *just* conception of development requires respecting the priority of the self and her freedom over other ends such as maximising happiness or achieving a specific human purpose or a particular notion of the good.

²⁵ For some, for example, the focus on the individual and her life may call for perfectionist ends, where perfectionism stands for theories which advocate for the promotion of a conception of the good even if it is incomplete, whereas for others this might be incompatible with justice. Deneulin (2002) defines perfectionism as 'a moral theory which regards certain activities, like knowledge, health or artistic creation as good, independent of any subjectivity... According to perfectionist moral theories, "certain properties constitute human nature—they make humans humans, and the good life develops these properties to a high degree or realizes what is central to human nature" (Hurka 1993, p. 3)' (pp. 498–499).

2.2 Development ethics and the priority of the self

Rawls' TJ convincingly advises that when society is organised in such a way that its notion of development places a specific end or a conception of the good as its highest goal, then justice will be transgressed. That is, the lives of some individuals and their way of living will suffer the consequences for the sake of such higher ends. This is because if considerations of justice are valued because of their contribution to another end or 'good', then automatically that other end becomes more important than the demands of justice themselves. Hence, the only way to guarantee justice is if the principles under which a society should be ethically arranged—and social policies legitimised—are not dependent on, or derived from, a final human purpose, end or a particular conception of the good. Rawls illustrates this point by making reference to utilitarianism and its core idea of enhancing overall happiness. This is because utilitarianism fails to adequately take into account the subject-specific variability of the mere principle of maximising happiness. For the desire of happiness can be interpreted differently and/or achieved by alternative means from one person to another or even by the same person over time. Hence, when a specific notion of happiness is applied to society as a whole while ignoring the distinctness of persons, it will lead to the coercion of certain persons by imposing on them the conception of others. This happens, for example, when utility is taken as the catch-all concept of happiness and economic growth as the means to achieve it.

In this way, utilitarianism might unfairly thwart the freedom of some to strive for their own understanding of happiness and/or to employ the means required to achieve it. This is what Rawls has in mind when concluding that utilitarianism is not capable of respecting the distinctness of individuals. Consequently—Rawls argues—social decisions based on utilitarianism can override justice rather than secure it (Sandel 1982). Notably, this is not an exclusive problem with the end of happiness. What this means is that justice cannot be justified in the name of any form of end or 'good', because it will succumb to the same difficulties when a single interpretation of a given end is applied to all persons. This is the reason why Rawls, as Kant before, relies on the concept of human freedom for considerations of justice. Because it is only when no particular conception of an end/good is regulative of society that one (I and everyone else) is free of coercion to follow one's own conception. From this, it follows that justice must be an end in

itself, intrinsically valuable and independently justified (i.e. without making any reference to any end or conception of the good). Thus, the only way in which justice can be guaranteed is by having an ideal conception of justice independent of all empirical ends.

For this reason, Rawls places the subject herself (the individual) rather than the objects (ends, good) that she seeks as the foundation under which the principles of justice have to be justified. In this respect, Rawls can be considered a 'deontological liberal' (Sandel 1982, p. 15) because, for him, the virtue of justice is prior to the good and the individual is prior to her ends. For Rawls, it is the individual self who becomes the basis of moral or political principles²⁶ and not a specific good or end that she pursues. In other words, it is the 'subject of ends, namely a rational being himself, [who] must be made the ground for all maxims of action' (Kant 1785, cited by Sandel 1982, p. 6). This implies that the individual becomes an end in herself (not the means to achieve an already-specified end) and as such it is the self who ought to be at the centre of social arrangements and their transformation, i.e. the social improvements of development.

It is this intuitive idea that a Rawlsian framework of justice compellingly advances to challenge the idea that development can be separated from social justice for the sake of economic growth. In his view, no individual—or specific groups of individuals—should pay the cost for the benefits of others. Likewise, there is no reason why some, as in the case of the labour reform in Mexico, should 'accept the [expected] greater advantages of others as a sufficient reason for [them to] lower [their] expectations' (TJ, p. 178). From this perspective, it makes no sense for society to be more preoccupied to advance a certain specified end, or the means to achieve it, rather than procure the *subject herself* and her freedom to follow her own conception of what constitutes a good life (within the limits of justice).

One should note that the emphasis here is on the individual herself rather than her 'capacity to choose', which is sometimes mistakenly taken as the primary concern of Rawlsian-inspired liberals. It is not uncommon to find scholars who reverse the emphasis to argue that it is the capacity of the individual to choose her ends—that happens to 'reside in the subject'—and not the subject herself, what Kant, Rawls and other liberals defend. For example, Sandel (1982) states

²⁶ In *Political Liberalism* (1996), Rawls argues that his theory applies only to the political domain.

that '[o]n the deontological view, what matters above all is not the ends we choose but our capacity to choose them. And this capacity, being prior to any particular end it may affirm, resides in the subject' (p. 6).

Contrarily to this kind of interpretation, this dissertation maintains that the priority of justice starts with the self (from which the capacity to choose is but one of its qualities). From this reading, then, it is primarily the concern to protect the individual person from unjustified coercion which is the reason why Rawls defends individuals' capacity to choose, which in turn is seen as emergent from the capacity that the subject has to be rational and reasonable (Rawls 1996). For Rawls, it is when the individual takes priority over the ends she pursues that justice can be secured. More clearly, the focus on the individual and her freedom is a requisite for justice to be prior in a Rawlsian sense. From this brief discussion, one can conclude that for development to be about justice, development has to be focused on the individual person in the deontological liberal sense²⁷.

However, as important as this finding may be, it is not free of controversy. It is precisely the mere emphasis on the individual as something distinguishable from her ends or social nature that some scholars find problematic and inaccurate for discussions about justice. Essentially, they worry about the conception of an individual as completely detached from her ends and her social context. They ask, 'How do we know that there is any such subject, identifiable apart from and prior to the objects it seeks?' (Sandel 1982, p. 7). For the purpose of this dissertation, it is useful to distinguish between two kinds of critique associated with the 'individualistic' aspect of the theory: (1) those who argue that Rawlsian-like theories are essentially individualistic and thus biased against relational understandings of the self and (2) those who associate the issue of individualism with its neglect of the actual social and intersubjective processes that constitute the self and her experiences.

The two types of critique have the same origin, namely the imputation of an individualistic bias of Rawlsian-like theories of justice which downplay, in one way or another, the relational features of human existence. The remainder of this

²⁷ This conclusion has the twofold implication of providing a more solid justification for the contemporary attention on the individual person as the centre of development and, at the same time, of making us suspicious of more demanding approaches that favour certain notions of the good at the expense of others as this would violate the priority of the right over the good (see also Rawls 1996). This means that no acceptable conception of the good can override the rights of individuals, and as such only those conceptions of the good that are compatible with such demands are well matched to the requirements of justice (Mulhall and Swift 2015).

chapter concentrates on the first critique while very briefly touching on the second. It does so because it takes the second line of critique to be more relevant for the *practical* implications of theories of justice (in chapter V), whereas the first line of critique is directly related to *methodological* concerns about Rawls' conception of the self. Hence, it is the methodological issue which is primarily related to the objective of this chapter. In addressing this concern, this chapter provides a deeper understanding of Rawls' theory as well as the ideal level in which it works. In addition, it reaffirms the priority of the individual for thinking about justice while showing that it might be more compatible with relational concerns—and thus to a relational understanding of injustice—than might appear at first sight. Together, these two reasons help strengthen the case for defending a comprehensive framework of justice composed by three different levels of theorisation about justice which—instead of being conceived as mutually exclusive—are seen as necessary for adequately orienting political efforts to construct a more just society.

2.3 The Rawlsian self: An ideal conception

The Rawlsian conception of the subject has been criticised from distinct fronts, though one may say that it is more because of the implications of presupposing this type of self—rather than the conception of the subject itself—that different philosophical perspectives have challenged this assumption²⁸. This section is concerned only with the critiques directed towards Rawls' defence of the priority of the individual. These critiques advocate for a more relational understanding of the self. Therefore, in illustrating this concern, it follows Sandel (1982), who could be seen as posing the strongest critique from the perspective of a relational self to the Rawlsian conception of the person (Mulhall and Swift 1995, Picket 1998).

From this line of critique, what is at stake is the obvious resemblance between the conception of the self in Rawls' justice as fairness and the Kantian self. In Kant's terms, the subject is conceived as an abstract transcendental self that cannot be grasped empirically because in the material world she is disguised by different desires, goals and preferences. However, behind that empirical person, Kant argues, there is a self who is the ground that makes our experience possible by

²⁸ For example, the libertarian perspective (e.g. see Nozick 1974) criticises the Rawlsian self because of its resulting implication for the Rawlsian different principle in the second principle. On the other hand, the communitarian perspective (see Mulhall and Swift 1992, Sandel 1998) questions the conception of the self for its implication of equal liberties for all (the first principle of justice).

unifying 'our diverse perceptions and holds them together in a single consciousness' (Sandel 1982, p. 8). Thus, according to Kant, there is a unity in all of us that has a will and is capable of reason, namely the transcendental (noumenal) self, who is the actual bearer of all possible ends. Therefore, it is only when individuals are treated as 'transcendental selves' that the person is conceived as a subject of experience (as a free agent) and not merely as an object of experience (an instrument) for the purpose of achieving a certain desire found in the contingencies of life. In this way, as Rawls does, Kant defends the priority of the individual over her inclinations, aspirations, ends, and so on in the real material world.

The problem is that this Kantian interpretation of the transcendental self raises the question: how can someone know whether there is actually something such as the unity that Kant refers to, in all of us? How can someone know whether this transcendental self exists at all? Indeed, one of the difficulties of the Kantian notion of the self is that it seems arbitrary from a moral point of view as this 'transcendental self' cannot be empirically appraised in real life. Consequently, it may be arbitrarily biased towards individualistic values. Now, the real question is whether Rawls' theory can also be charged of the same critique. Evidently, one may find it extremely difficult to separate the Rawlsian conception of the self within the original position (and its implications) from the spirit of the Kantian conception of the transcendental (noumenal) self. Hence, Rawls is also accused of an (apparent) individualistic conception of the self that fails in two ways: it fails to take seriously into account the relationality of the self, and it fails due to our incapacity to understand ourselves as a transcendental self who is detached from all empirical contingencies. Sandel (1982) distinguishes between these two critiques in the following way:

- ***The sociological perspective*** claims that Rawlsian-like theorising endorses a particular social ontology that is 'methodologically individualist or atomist' (Young 1990, p. 45) and as such it disregards the inherently *social* nature of the person. The person and her self-understanding (i.e. her identity), they argue, are quintessentially social products; her own goals, desires and even 'the way that she thinks of herself as an individual' are originated in the social world (Mulhall and Swift 1995, pp. 14–15). From this perspective, an independent self completely detached from her history, her experiences and her contextual and socially shaped

convictions is unimaginable, and so by implication, a neutral impartial subject is also impossible *in real life*. Advocates of this perspective suggest that instead of developing principles of justice derived from individuated selves with pre-social identities, what is needed is the cultivation of more collective values such as altruism, benevolence, and respect for distinct groups and social identities.

- ***The teleological perspective***, of which Sandel can be thought of as the main expositor among many, argues that it is the metaphysics of the individuated self which remains controversial and problematic. Particularly, the way in which Rawlsian-like theories characterise the relationship between the self and its ends. Sandel maintains that the problem is that for us to be persons 'for whom justice is primary, we must be creatures of a certain kind, related to human circumstances in a certain way' (1982, p. 49). Particularly, according to Sandel, a person must always regard herself separated from her ends: always at a certain distance, though conditioned, but 'never fully constituted by them' (p. 22). He calls this the 'subject of possession', a subject characterised by an *identity* fixed *ex ante* of our experiences. Thus, it excludes the possibility of understanding oneself as merged with our shared ends with others. It is from this idea that he concludes that the conception of the person within the original position threatens the neutrality of the theory (Mulhall and Swift 1992) since it is biased against relational self-understandings of community.

What the sociological objection mainly refutes is that Rawls' form of liberalism ignores that individuals are conditioned 'all the way down' by the social context and therefore it is biased towards individualistic values. Somehow related but different, the teleological perspective argues that the assumed subject of possession within the original position is incapable of taking into account the relationality of individuals and the collective nature of the ends that individuals pursue in real life. This is the type of subject that Sandel makes reference to when he concludes that we cannot see ourselves in that peculiar way. Therefore, it is alleged that the principles of justice are not truly independently derived as they favour an individualistic understanding of the self, detached from her ends and relations (i.e. subject of possession). Thus, contrarily to Rawlsian liberalism, these two perspectives argue that the self is in fact defined by those ends and her

relations. Consequently, some of these scholars suggest that it is not justice that needs to be an absolute priority but instead other virtues such as benevolence or the moral good that individuals ought to seek²⁹. The following section shows that these critiques miss the point of Rawls' *ideal* theory.

2.3.1 Rawls' ideal conception of the self as an assumption in the original position

According to Sandel, the problem is precisely the subject of possession advanced by Rawls who is characterised as an 'antecedently individuated subject... a subject whose identity is given independently of the things I have, independently, that is, of my interest and ends and my relations with others' (Sandel 1982, p. 55). From Sandel's perspective, this implies that for Rawls someone's identity must be fixed at any given time throughout one's [real] life. Sandel insists that this is not true in real life, and he argues repeatedly that we simply cannot understand ourselves as the type of persons that deontological liberalism asks us to be (1982, p. 11, p. 14, p. 65). Conversely, he fervently argues that there are occasions where the ends one holds can be so thoroughly adopted by the self that they actually become constituents of her personal identity rather than merely attributes that she possesses. In his own words:

[someone can lose possession of something] as the desire or ambition becomes increasingly constitutive of my identity, it becomes more and more *me*, and less and less *mine*... the less I possess it, and the more I am possessed *by* it. Imagine that a desire, held tentatively at first, gradually becomes more central to my overall aims, until finally it becomes an overriding consideration in all I think and do. As it grows from a desire into an obsession, I possess it less and it possesses me more, until finally it becomes indistinguishable from my identity (Sandel 1982, p. 56; emphasis in original).

In this passage, Sandel illustrates in a clear way why the subject of possession represented in the original position may not adequately relate to our true moral experiences. He suggests that sometimes the values that an individual holds are

²⁹ This is not necessarily true of Young (1990) or other theorists within the critical theory tradition. Their main concern is the inadequate attention to social processes and intersubjective relations of contemporary theories of justice. But they do not reject the priority of justice (see chapter V).

so strongly attached to her that they actually make her the very person that she is. One may wonder, however, how different, really, Sandel's own understanding of the self is from that of Kant's conception. Actually, one could say that his own description is as vulnerable to the same objection of arbitrariness made to Kant's transcendental self. Whilst Kant's is arbitrary because it is abstracted from all contingency, Sandel's is arbitrary because it is undistinguishable from contingency. In this respect, both (Kant's and Sandel's) accounts 'may be unable to distinguish between the lives of the saint and the scoundrel' (Sandel 1982, p. 37) as long as they both fit with the requirements of their own descriptions. Barry (1984) goes even further and writes that Sandel's view 'gives [the] green light to every string-pulling parent and crony-hiring academic. And at the end of that road stand Torquemada, Stalin, Hitler, and Begin' (p. 525). As will be clear below, this is precisely what Rawls tries to solve with his own method.

While Rawls himself accepts that his theory is 'highly Kantian in nature' (TJ, p. xviii) and, as such, he adopts a similar conception of the self, he does it in a very particular way. He insists that an *ideal* conception of justice independent of all empirical ends is needed as an external point of view to assess social arrangements. But, to overcome the arbitrariness attached to the Kantian self, he suggests that at the same time this external point of view would have to be connected with the already *situated selves* in the real world. This is precisely the role of the device of representation, the original position, in Rawls' TJ. It aims at finding a point of view 'that enables us to envision our objective from afar' but at the same to be a 'form of thought and feeling that rational persons can adopt within the world' (TJ cited in Sandel 1982, p. 17). This is what Rawls refers to as the 'Archimedean point', meaning a point from where it is possible to develop a conception of justice that is not contingent on, or justified by, any conception of the good, any desire, or a particular social or human interest 'generated by a particular arrangement of institutions' (TJ p. 260) that happened to exist as a result of historical contingencies.

Whether he was successful in this task is a matter of dispute. What is important to bear in mind, nonetheless, is that Rawls' aim is to advance the Kantian notion that there is a dignity that all humans share by the simple reason of their existence. Thus, what matters is not so much the idea of an individualistic subject capable of detachment from her circumstances but that the dignity of the subject I am (or you are) is not contingent on whether one possesses something or stops

possessing it. For Rawls, every single individual is always a subject whose dignity and moral worth are invulnerable to transformation by empirical experience.

This idea is well illustrated by a scene in a film called *My Name is Khan* (2010). At one point, a young Indian Muslim with Asperger's syndrome listens to other Muslims cursing at Hindus. He then repeats those words in front of his mother without really understanding what he is saying. His mother, troubled by what her child is saying, tells him a story to explain to him that what he was doing is not right. She grabs a notebook and a pencil and starts drawing sketches (only using lines and circles) of two human beings that are indistinguishable from each other, but one of the human beings is beating the other. Her mother then asks him: 'which of these is the Muslim and which the Hindu?' The young man tries to answer but he simply cannot tell the difference. 'They are similar'—he replies. His mother goes on to tell him that the only difference between them is what the person is doing—whether treating the other kindly or not. Of course, the mother's explanation raises other questions but the important point is that the mother shows the young man that one person's ends, attributes, desires, and so on do not render him more or less valuable; each of the two persons was an individual with equal moral worth.

This is the non-empirical 'independent' self who is presented as a priority when thinking about justice. It is precisely this non-empirical self whom Rawls tries to illuminate in his theory with the construction of the original position and its assumptions. The idea is to make it accessible to real persons within 'the canons of reasonable empiricism' (Rawls 1977, p. 165). This is Rawls' departure from Kant. Rawls recurs to a strategy that would be unthinkable and even self-defeating for Kant. He incorporates certain empiricist assumptions in his hypothetical situation, what he calls 'the circumstances of justice', and at the same time prevents the parties from knowing their specific attributes and ends. As mentioned above, the 'circumstances of justice' refer to the assumption that real life is marked by moderate scarcity of material and natural goods and thus is generally marked by a conflict of interests on the division of social advantages. In this way, by including some general assumptions such as individuals' rationality and certain human life conditions, the theory and its principles aim at connecting the abstract device with the persons situated in the real world (Rawls 1996).

Although this tactic of including some 'empirical conditions' within the account of the circumstances of justice might seem to contradict Rawls' own intention of an individual completely independent from empirical contingencies, it instead accentuates and distinguishes the strength and the ideal aspect of his proposal. It highlights the *hypothetical* nature of the original position, in which the 'empirical conditions' become only an account within the specific artificially constructed situation. Thus, these conditions do not necessarily have to be a realist empirical representation of the world. The fact that the circumstances of justice are not to be taken as a 'straightforward empirical generalization' is best understood by Sandel himself:

[T]he account of the circumstances of justice is an account within the account of the original position, which, it must be recalled, is hypothetical to begin with. The conditions described there are meant to be the conditions in which the parties to the original position carry out their deliberations, *not the actual conditions in which ordinary human beings live their lives...* The objections depend in large part on the mistaken assumption that the facts of the circumstances of justice are meant to be facts of life in the real... But the description of the circumstances of justice cannot be regarded as a straightforward empirical generalization, to be established or refuted by the best evidence of sociology, psychology, and so on. Since the entire account of the circumstances of justice is located within the account of the original position, the conditions and motivations it describes are asserted *only of the parties to the original position and not necessarily of real human beings*. Once installed as a premise of the original position, the account of the circumstances of justice ceases to work as a simple empirical account which can be checked for accuracy against actual human conditions (Sandel 1982, pp. 40–41, emphasis added).

This distinction between the device of representation of the original position, and the actual human circumstances in the real world, is also constantly stressed by Rawls. For example, he wrote: 'We must keep in mind that the parties to the original position are theoretically defined individuals' (TJ, p. 147); 'We need not suppose of course that persons never make substantial sacrifices for one another, since moved by affection and ties of sentiment they often do' (TJ, p. 178). In fact, this too is well understood by Sandel, and this is the reason why he also rejects

the 'sociological objection'. Because deontological liberalism 'is in important ways less restrictive than the sociological objection suggests. Altruism and benevolence, for example, are wholly compatible with this liberalism, and there is nothing in its assumption to discourage their cultivation [in real life]' (Sandel 1982, p. 12).

Similarly, Mulhall and Swift (1995) suggest that, in TJ, Rawls clearly acknowledges 'the constitutive role of social matrices' in people's own desires, abilities, language, and so on in real life (p. 199). Therefore, any objection to Rawls' theory from this perspective reveals a misunderstanding of the Rawlsian hypothetical device where the accounts of theoretical persons, their motivations, and the circumstance of justice are solely 'premises of the original position'. This therefore does not imply that they 'hold for persons in real life' (Sandel 1982, p. 42). Hence, once the ideal level at which Rawls' theory works is properly understood, it is possible—along with Sandel—to dismiss the sociological objection as being inaccurate. Yet this conclusion raises the question: why is this not sufficient to dismiss also the teleological conception, that is, the claim that Rawls' theory asks us to understand ourselves as 'subject of possession' in real life? Sandel treats the conception of the person differently from other premises in the original position, but it is not clear why.

One reason might be that Sandel considers that this particular premise (i.e. the conception of the self) is not a reasonable assumption within the original position. Indeed, Rawls himself suggests that it is not enough to have acceptable principles; we must also make sure that the premises producing those principles are equally acceptable to 'our considered judgments in reflective equilibrium' (TJ, p. 579). Rawls writes:

In searching for the most favoured description of this situation we work from both ends... By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principles, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match out considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium (TJ, p. 20).

Following Rawls, Sandel accepts that the criterion for judging the validity of the descriptive premises within the Rawlsian exercise is 'given by our "intuitions" about what is empirically true' (Sandel 1982, p. 43). Thereafter, the question that arises is whether the description of 'the parties to the original position [who] are *theoretically* defined individuals' (TJ, p. 147, emphasis added) is an assumption that is concordant with our intuitions. Specifically, the question is whether the conception of individuals who do not know their conceptions of the good, social position, aims, attributes, and so on is an acceptable assumption for discussing matters of justice. Hence, we could ask, is it not generally true that when discussing issues of justice, we would consider unacceptable that someone could make reference to her personal attributes or to her social/material position to defend her judgement? If the description of subjects who are ignorant of their own ends in the original position is simply a representation of individuals deliberating about justice, then Rawls' conception of the individual might be a reasonable premise after all.

Indeed, one could argue that this is the core motivation behind Rawls' justice as fairness, which has nothing to do with favouring some conceptions of the good (like individualist values) over others. In this regard, Rawls writes that his conceptualisation of the self 'ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances' (TJ, p. 12). In *Political Liberalism* (1996), Rawls further clarifies that the original position does not presuppose a metaphysical conception of the person but a political one. This means that it aims at characterising individuals interacting in political and social relationships. On this account, the original position is thus simply a device of representation that 'models the conditions that appropriately limit what they can put forward as good reasons' (Rawls 1996, p. 25)³⁰. Similarly, in an article published in 1980, Rawls confirms this view when explaining the assumption of the veil of ignorance. He writes: '[e]xcluding this information is required... [o]therwise the parties would have disparate bargaining advantages that would affect the agreement reached' (p. 523).

³⁰ Kilcullen (1996) reaches the same conclusion:

I think that what Rawls is now describing is not too dissimilar to the way in which we actually argue about justice. If we say "you just have to submit, because I'm stronger/richer etc.", that is not an argument in terms of justice. Arguments about justice do not make any reference to differences of bargaining power. We argue as if we don't know what the differences are.

Rawls is thus not ambiguous in his goal of advocating for the priority of justice, and as this chapter suggests, it appears that the only possibility to succeed is by relying on a certain view of the individual as distinguishable from her ends (Barry 1984). But this does not mean that someone has to understand herself as a subject of possession whose identity cannot change in the real world. Instead, it means that even if Rawls' theory maintains that the individual (and not her ends or her identity) is the unit of moral concern, one could still argue that '[j]ustice as fairness is not, plainly, Kant's view, strictly speaking...[rather] the adjective "Kantian" expresses analogy and not identity' (Rawls 1980, p. 517). Just as the assumption of mutually disinterested individuals does not rule out the emergence of other forms of motivations (altruism, benevolence) in real life, then, the theoretical non-empirical self in the original position does not rule out the emergence of different understandings of the self in reality (see also Rawls 1980, p. 545; Freeman 2012)³¹.

This interpretation of Rawls implies that it is simply wrong to believe that individuals in real life have to understand themselves as subjects of possession or that there is a biased conception of the self behind the veil of ignorance. It seems that the problem with these two critiques—the sociological and the teleological—of Rawls' exercise is that both misinterpret the hypothetical and *ideal* nature of the theory whose main role is to identify what a perfectly just society would look like *if* individuals mutually understand each other as equal moral persons. Its aim is to model 'a type of society within which people accord a particular moral status to one another' (Mulhall and Swift 1995, p. 199) regardless of her identity (within the limits of justice). Rawls is explicit in these demands³²:

For in this situation [the original position] [wo]men have equal representation as moral persons who *regard themselves* as ends (TJ, p. 180, emphasis added).

The members of such a society [well-ordered] are, and *view themselves* as, free and equal moral persons (TJ, p. 82, 1999 ed., emphasis added).

³¹ Still, Rawls' conceptualisation of the self has also been criticised on different grounds (e.g. O'Neill 1989 cited by Schwartzman 2006, see also Robeyns 2008). This is briefly touched upon in the following chapter.

³² This is further clarified in Rawls' *Political Liberalism* (1996, see p. 63, 150).

Thus to respect another as a moral person is to try to understand his aims and interests from his standpoint... (TJ, p. 338).

Ultimately, it is from this interpretation of the original position that one can make sense of Rawls' claim that one's public identity as a moral person 'is not affected by changes over time' in her conception of the good (Rawls 1980, p. 545) and at the same time admit that for that person, her actual identity will surely be affected. Yet, from a moral point of view, this person is still a subject whose dignity ought to be respected. Hence, one could say that to understand each other in such a way is a chief normative aspect of Rawls' entire conception of justice. This conclusion follows from Rawls' significant concern with the pervasive influence of the basic structure and the context on one's own identity and on the way one regards others.

Notwithstanding the interpretation presented here, it is important to note that it is commonly assumed that the sociological and the teleological critiques led Rawls to recast the presentation of his theory in *Political Liberalism* (1996)³³. Whether this is true or not is not relevant. But what this change may reveal is that, contrarily to the critiques, Rawls was more interested in reconciling rather than excluding competing views (Barry 1984) and in achieving the acceptance of, rather than imposing, the priority of justice and hence of the self.

2.4 Development ethics and ideal theory

This chapter started with the observation that the idea of development—however conceived—and its practical implications always spill over to human lives for better or for worse. The dominant approach of development (inspired by utilitarianism) has failed to hold its promise of a better life for all and at the same time has propelled an urgent demand for a more just world. In this respect, Rawls' theory of justice not only provided powerful reasons for why justice is to be a fundamental concern of development, but more importantly it provided a coherent alternative framework to assess social arrangements from the perspective of justice. Hence, this chapter focused on offering an initial explanation of the role

³³ Rawls denies this interpretation. He indicates that this refinement was necessary for issues of internal consistency. This change, however, did not represent a departure from the essential ideas of TJ. Thus, they do not affect the ideas presented in this chapter in an important way.

an ideal theory can have for the task of promoting justice, why such a framework has to be developed within ideal conditions, and why Rawls' theory is appropriate to play this role³⁴. In addition, in presenting some debates about Rawls' conceptualisation of the individual self, this chapter aimed at clarifying the distinction between ideal theory and other real-life empirical concerns which will be relevant in later chapters. The following chapters will continue to develop these points and show that the role of ideal theory is indeed essential—even if insufficient—for the task of promoting justice in the real world.

So far, on the basis of Rawls' *Theory of Justice*, this chapter suggested—but did not prove—that the usefulness of an ideal theory of justice lies in (1) providing the direction to which development policies should aim for (i.e. it sets an objective) and in (2) providing a framework to evaluate states of affairs and as such it helps to *identify* injustice. The next chapter further clarifies these two roles of ideal theory. For the moment, the important point is to recognise that Rawls' ideal theory provides an 'Archimedean point' from where society and social policies can be evaluated. For example, it facilitated the evaluation of the labour policy in Mexico from the perspective of justice. Using Rawls' ideal theory, one was able to conclude that the policy was unjust because it sacrificed workers' rights for the sake of increasing economic growth and at the same time risked reproducing unjustified inequalities. Moreover, it is similarly important to stress that Rawls' ideal theory also offered a strong philosophical foundation for redirecting the notion of development to the lives of individuals and their moral worth. It illustrates that if development—understood as providing an objective where to aim—is truly concerned about justice, then it can only be about individuals and their freedom.

Yet, despite these valuable insights, an ideal conception of justice may not be *all* we want from a theory of justice. Knowing that, ideally, a society should look like a Rawlsian 'well-ordered' society does not say much about how to get there. It does not give information for developing alternative courses of action to make the world more just, nor does it say enough about how to evaluate these different alternatives against each other (Sen 2006) or how these ideas ought to be translated in practice.

³⁴ As further elaborated in chapter VI, this dissertation assumes that Rawls' ideal theory is well suited for the Mexican case as Mexico is considered to follow a liberal democratic political system.

For this reason, the recent literature on justice has questioned the usefulness of an ideal theory of justice developed at high levels of theoretical abstraction and thus detached from the real lives and the real problems that most people face, while the urgency for a practical conception of justice remains. What is lacking, some argue, is a conception of justice capable of influencing actual social policies. These scholars demand the elaboration of a nonideal approach to justice to rectify injustice in the real world (e.g. Wolff and De-Shalit 2007). These demands raise other kinds of questions. For example, can ideal theory guide practical policies or is a nonideal theory indispensable? Should nonideal theory be an extension of ideal theory? If so, how should they be merged? Or should nonideal theory be a self-standing approach? If so, does it mean that ideal theory is redundant? The next chapter addresses these worries. Particularly, it critically analyses Sen's *Idea of Justice* (2009)—arguably, the most robust nonideal theory to date—in the light of this debate.

III. Sen's comparative approach: A replacement of the transcendental approach?

The last chapter discussed ideal theory as a theory which aims at defining what justice is under specific conditions unconstrained from historical and institutional contingencies with the intention to provide a useful external standard to assess social reality. It concluded by briefly pointing out its unfitness to orient social policies to reduce injustice in practice. This insufficiency of ideal theory to deal with these practical issues has led some authors to question its overall usefulness for this task. They insist that the problem is their abstract nature which renders them useless for offering useful guidance to confront the kinds of injustice that the world faces today. Consequently, scholars agree that a nonideal theory of justice is needed.

This chapter starts by presenting the ideal/nonideal debate to clarify the distinction between the two as well as to understand some of the issues that ideal theory face when translated to practice. It will argue that although nonideal perspectives do highlight some of the obstacles for translating ideal principles into practice, their critiques miss the point of ideal theory and thus are misplaced when presenting ideal/nonideal theories as mutually exclusive. At this point, the chapter introduces Sen's *Idea of Justice* (2009) as a related but somehow different line of critique. Similarly to nonideal literature, Sen insists that rather than aiming to discover the nature of the 'perfectly just society', efforts should be concentrated on advancing justice of societies. But going further, he affirms that an ideal definition of justice is not needed at all to reduce injustice in the world, and he presents an alternative framework to replace Rawlsian-like ideal theories. The chapter critically analyses the first part of Sen's proposal, what the chapter calls 'his point of departure'. It argues that, similar to nonideal critiques, Sen's proposal is not successful at displacing ideal theory for remedying injustice. The chapter concludes by classifying Sen's work as a *potential* nonideal framework, suggesting that it might be better seen as complementary to ideal theory.

3.1 Justice: Ideal and nonideal understandings

Until recently, the literature of justice was largely concerned with ideal theory, or the identification of the principles that would determine what makes a society perfectly just. Meanwhile, other aspects related to the practical matter of advancing justice or reducing injustice were largely disregarded. The problem is that ideal theory is not all we need to reduce injustice in the world, since having an ideal of justice may be of little help when intended to be applied to a real case of injustice. It is precisely these concerns about the usefulness of ideal theories in orienting actual justice-promoting actions which have motivated a lot of discussion about the role of this kind of theorising in real life. This literature emphasises the urgency for having a more realistic, practical conception of justice. It questions whether ideal theory is really necessary for the practical concerns of reducing injustice here and now. These worries take place within the literature of nonideal theories, which are of first importance for the topic of this dissertation. If justice is to be a fundamental concern for development practice, it is imperative to start paying much more attention to the mechanisms through which justice can be advanced as part of development action.

The analysis presented here, however, will show that just because one may be anxious to see the demands of justice translated into practice, that in itself does not necessarily render ideal theory useless (even if some might see it that way). Actually, it might be when it is needed the most. As this dissertation will argue, a comprehensive approach to justice—composed of an objective where to aim at (ideal theory), a practical way to get there (nonideal theory), and a ground from where to depart (Idea of injustice)—is better suited to construct a more just society through political action. The previous chapter introduced the first level of theorisation. This chapter defends and clarifies its position in relation to nonideal theory. It shows that even if Rawls was interested in developing the most reasonable theory of justice—thus concerned with ideal theory—he also was highly concerned with the viability of his theory in the real world. As a matter of fact, it was Rawls himself who initially set the division between ideal and nonideal theory (Stemplowska and Swift 2012) and suggested that it was the latter which should deal with the practical problems we face in the real world.

Rawls distinguished the *ideal* from the *nonideal* features by assuming ‘strict compliance’ and ‘favourable circumstances’. Whereas the former implies that ‘nearly’ everyone is presumed to comply with the principles of justice, the latter

refers to the minimum socio-economic conditions necessary to realise a just society. Since the feature of 'favourable circumstances' can be thought of as 'relatively prevalent in the modern world' (Stemplowska and Swift 2012, p. 375), ideal theory is usually reduced to the issue of full compliance—assuming that it is compliance with the right principles that leads to a just world (Robeyns 2008). According to Rawls, the reason for assuming these ideal circumstances is that this will allow us to portray a 'conception of a just society that we are to achieve if we can' (TJ, p. 246). This is consistent with the idea that the nature of a conception of justice cannot depend on the actual circumstances of a given society, such as people's level of compliance. Otherwise, we may end up with a very partial picture of what we really want from a conception of justice.

Although this was Rawls' initial rationale for the distinction between ideal and nonideal theory, this distinction has been expanded in recent years (Hamlin and Stemplowska 2012, Stemplowska 2008), though it remains widely understudied (Simmons 2010, Robeyns 2008). In general, the discussion has shifted more to the methodology employed in ideal theories (rather than on the principles it produces) and to the inability of ideal theories to guide action. In very broad terms, it could be said that what supporters of nonideal theories find objectionable is the fact that ideal theory and its principles are derived from idealised scenarios, unrestricted from all the flaws and the less-than-perfect conditions that characterise the real world. As such, they do not provide useful or accurate guidance for these nonideal circumstances (Sen 2009, 2006, Farrelly 2007, Goodin 1995, Phillips 1985). Some examples of the most pressing issues discussed in the literature are those related to 'fact-sensitivity' and 'idealisation' (where strict compliance can be one of the expressions of these, though it is also treated as a separate issue altogether; e.g. see Phillips 1985, Hamlin and Stemplowska 2012)³⁵.

³⁵ The list of problems presented here is not exhaustive and others have summarised them under different names. For example, Valentini (2009) tackles what she calls 'the guidance critique' highly related to the problem of idealisation, though in a subsequent work she uses yet another typology to present different critiques (see Valentini 2012); Swift (2008) differentiates between 'epistemological' and 'practical' political philosophy to defend the use of ideal theory in nonideal circumstances; see Simmons (2010) on the priority of ideal theory over nonideal theory; see also Stemplowska (2008) for a different distinction between ideal and nonideal theory. Others talk about the distinction between abstraction and idealisation (e.g. Goodin 1995, Schwartzman 2006), whereas Robeyns (2008) subsumes the two under the name of idealisation; still others criticise the whole exercise of ideal theory as being hegemonic and ideological and thus a form of injustice (e.g. Mills 2003, Schwartzman 2006). Importantly, this variation in the terminology is also relevant because the kind of critiques directed towards ideal theory will be highly contingent on the definition of ideal theory itself.

The charge of *idealisation* usually relies on the distinction between abstraction and idealisation. On the one hand, ‘abstraction’ refers to the act of omitting or excluding some information considered arbitrary from a moral point of view in order to simplify the reality. On the other hand, ‘idealisation’ refers to the act of either representing reality with extra characteristics or attributes which seem impossible to ever hold in real life or portraying reality in a way that misrepresents morally relevant categories (Goodin 1995, Stemplowska 2008, Robeyns 2008, O’Neill 1987 cited by Schwartzman 2006). In general, the latter strategy is what is considered problematic for developing ideal theories whereas the former is not. For instance, Rawls’ conception of the person in the original position can be seen as including both abstraction and idealisation. It *abstracts* because it represents an individual behind the veil of ignorance, that is, ignorant of morally arbitrary categories for justice (i.e. personal attributes, social position, gender, etc.). It *idealises* because it represents an individual completely independent from others, which is deemed to misrepresent—and thus be biased against—the reality of the provision of care (Robeyns 2008)³⁶.

In terms of *fact-sensitivity*, the charge (somehow related to the issue of abstraction) is that ideal theories do not pay sufficient attention to empirical facts such as power relations, political feasibility, and psychological limits of human nature (Valentini 2009). Hence, even if Rawls’ theory can be considered to be moderately fact-sensitive by including the circumstances of justice in the original position, it has been suggested that it is not sufficiently so to be ‘realistically possible’ (Farrelly 2007, p. 845)³⁷. Although idealisation and fact-sensitivity are distinct methodological critiques, both have been used to question the validity and the operationalisation of ideal principles in specific unjust contexts. This chapter focuses on this practical issue rather than on the methodological one which is directly linked to the justifiability of what an acceptable ideal theory would be. The relevance of this debate for the argument of this dissertation is, then, that it points out some of the difficulties that ideal theories (such as Rawls’) face to be practically possible here and now and hence it highlights the need of a nonideal theory.

³⁶ Scholars from the critical tradition usually criticise both abstraction and idealisation. They claim that it is the methodology of detaching from the real world in general which is problematic (see chapter V).

³⁷ Although Farrelly (2007) seems to conflate idealisation and fact-sensitivity as the same problem, his claim is that normative theorists must pay more attention to what is feasible by including more facts on the analysis.

In the specific case of Rawls, it is often said that because its principles are derived from idealised and fact-insensitive circumstances, his theory is not successful in guiding political efforts to remedy injustice in the world. As a matter of illustration, one could say that, despite its abstraction, Rawls' original position is a normative assumption that denounces as unjust the discrimination of people on the basis of race, ethnicity, gender, etc. Similarly, his principles of justice would consider as unjust a situation where people do not enjoy fair equal opportunities. The problem is that Rawlsian justice may not make any difference to the reality of the lives of those discriminated groups here and now. This is because his principles are developed for ideal circumstances, including a perfectly just scheme of institutions where it is assumed that people generally comply with it. Meanwhile, the theory completely disregards all important facts about the particular historical situation, for example, what kind of discriminations people suffer, who are discriminated against, why they are discriminated, who discriminates them, etc. Certainly, for the case of ethnic discrimination observed in Latin American countries, one would have to consider the long history of colonialism and the power relations that it has developed over time as well as the acceptance of discriminatory practices as part of the culture and values of the society in question. In the absence of this information, critics argue, Rawls' theory becomes futile to guide actual interventions that can be effective and realistically possible here and now³⁸.

Yet the latter example illustrates only one part of the problem, that of ideal theory being insufficient to derive adequate guidance. But there can be an even more problematic case, critics warn, namely when ideal theory orients action in a way that does more harm than good. To illustrate, let us consider the example of informal domestic work in Mexico, which is a relatively common practice in most Latin American countries. Such work is often done by poor women with little or no education for a very low wage, without a contract or any work-related benefits (such as social security and seniority allowance), which means that these workers can be dismissed anytime with no compensation. These poor women workers are thus highly vulnerable in terms of life conditions. Let's assume further that a Rawlsian-inspired law, based on, say, equal fair opportunities, is brought into force to formalise domestic work in order to ensure regulated work time, redundancy payments, paid holidays, and social security paid by their

³⁸ Valentini (2009) derives a possible, even if partial, Rawlsian response to this issue of discrimination.

employers³⁹. Notwithstanding the possible usefulness of this law for the benefits of these women's living conditions, there is also a danger that it may be counterproductive. For instance, one of the effects of this law is that it may render many of these women unemployed because of the higher cost of hiring them. Another outcome could be the non-applicability of the law by continuing an informal agreement between the parties: although it would maintain women at work, their status would be strictly illegal and thus probably more vulnerable.

For these reasons, some theorists claim that ideal theory, at best, fails to provide guidance for the nonideal circumstances and, at worst, can even be counterproductive (Stemplowska and Swift 2012; e.g. see Goodin 1995, Philips 1985). But can the worth of ideal theorising be reduced to the sole test of offering practical guidance here and now? Should ideal theory be rejected because of its (apparent) uselessness for the nonideal circumstances of the real world? The lack of direct applicability of ideal theory to specific cases of injustice has led to two different positions about these questions: those who worry about the practical feasibility of ideal theory and are doubtful of its usefulness for orienting action and those who dismiss it altogether and instead advocate for its replacement (e.g. Farrelly 2007, Sen 2009). The more extreme critique, that is, the total rejection of ideal theory, will be addressed later on. This section deals first with the less extreme critique, that is, the 'guidance critique' (Valentini 2009).

Defenders of ideal theory argue that those who attack the methodology of ideal theorising in order to discredit it for its inability to provide adequate guidance are missing the point. The value of ideal theory should not be assessed in terms of the practical guidance it provides. For instance, Swift (2008) compellingly defends the value of theorising that simply aims at finding 'truth' which can 'bear on actions' at some point. He calls this the 'epistemological', in contrast to the 'practical', role of political philosophy (p. 367). For this purpose, some authors recognise that making 'false assumptions' is unavoidable and indeed desirable for developing a sound ideal theory of what a perfectly just society would look like (Stemplowska and Swift 2012, Robeyns 2008⁴⁰). Similarly, Stemplowska (2008) argues that this is particularly true if the theory is to make us reflect on the influence that certain constraints impose on our reasoning, or what we can achieve if we commit to

³⁹ Argentina recently pronounced such a law (see <http://www.trabajo.gob.ar/domestico/derechos.asp>).

⁴⁰ Note, however, that this also requires reflecting about good and bad forms of idealisations. On this topic, see Goodin 1995, Valentini 2009, Robeyns 2008.

certain values, or simply what the world ought to be. Likewise, some authors suggest that taking into account feasibility constraints is not necessary for theories aiming 'to guide political action' (Swift 2008, p. 363) or for the moral justification of fundamental principles (Gilbert 2008). In Hamlin and Stemplowska's (2012) words:

... we can only pursue the general inquiry into the nature and structure of values successfully if we are *not* tied to any particular feasibility constraint and are free to construct and compare hypothetical scenarios without reference to their feasibility. Assuming any particular feasibility constraint would give us only a very partial glimpse at our values (p. 55; emphasis in original).

In other words, these authors emphasise that the proper role of ideal theories of justice is to develop a systematic conception of perfect justice. Hence, those who demand more from ideal theories in terms of *concrete* practical guidance misunderstand the nature of ideal theory. There is simply no reason to equate ideal theory with the immediate task of orienting action. In fact, Rawls raised warnings about directly translating his ideal principles into actual circumstances which depart from the ideal conditions from which the principles were derived (TJ, pp. 245 and 247; see also Stemplowska and Swift 2012, Goodin 1995)⁴¹. That is, in line with nonideal advocates, Rawls acknowledged that there is an important role to play for nonideal theory in dealing with these practical issues (TJ, p. 8; see also Culp 2015, Simmons 2010).

This does not mean, however, that ideal theory becomes unnecessary for reducing injustice in practice. On the contrary, Rawls considered that a sound ideal theory should always be practically relevant for the real world, not in the sense of offering immediate remedial strategies to reduce injustice but in serving as an encompassing frame throughout this endeavour. It is in this sense that Rawls presents ideal theory as the 'fundamental part of the theory of justice' although it is 'obvious' that the problems of nonideal theory are 'the pressing and urgent matter... the things that we are faced with in everyday life' (TJ, p. 9). Thus, in Rawls' view, ideal theory has to be prior to nonideal theory for injustice to be effectively reduced (Freeman 2012, Simmons 2010). Rawls offers two main

⁴¹ Freeman (2012), however, argues that Rawls' ideal principles can indeed be useful for our current nonideal reality.

reasons to support this claim. First, Rawls argues that ideal theory is a prerequisite because it 'provides... the only basis for the systematic grasp of these more pressing problems' (p. 9). That is, by providing a systematic framework of thought to assess, criticise and determine whether a state of affairs or a given practice is to be considered unjust, ideal theory is always action-guiding—even if it does not result in 'achievable and desirable' recommendations (Stemplowska 2008; see also Freeman 2012, Simmons 2010, Gilibert 2008). This is what Stemplowska and Swift (2012) call the 'urgency' role of ideal theory. Rawls writes:

Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason... Thus as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous as identified by the extent of the deviation from perfect justice... Thus while the principles of justice belong to the theory of an ideal state of affairs, they are generally relevant [to nonideal conditions] (TJ, p. 246).

To illustrate, we can think of the two examples used above (i.e. ethnic discrimination and domestic work). Besides pointing out the lack of effective guidance provided by Rawls' ideal theory, one could argue that in both cases there is an underlying claim to action which is inferred from ideal theory and which is prior to the urgency of finding a remedy for the situation. We are concerned with their rectification because, on the basis of an ideal framework, there is certainty (assuming it is generally accepted) that discrimination and unequal work conditions are unjust. This illustrates the way in which ideal theory is action-guiding via the urgency role. By systematically *identifying* injustice (even without giving details about how this injustice comes about), ideal theory also calls for political action to address these situations. The second way in which ideal theory is prior to nonideal theory for reducing injustice is that ideal theory 'set[s] up an aim to guide the course of social reform' (TJ, p. 245). That is, though not necessarily dictating how to proceed, ideal theory sets a target at which nonideal efforts should aim (Culp 2015, Stemplowska and Swift 2012). Thus, nonideal theory has the role of identifying 'policies and courses of action that are likely to be effective and politically possible as well as morally permissible' (Rawls 1993,

p. 60) in order to move in the direction of ideal justice. This is what Stemplowska and Swift (2012) call the ‘target’ role of ideal theory. In this sense, nonideal theory is strictly transitional, always to be seen as ‘secondary [to] and dependent’ on ideal theory (Simmons 2010, p. 10).

In these two ways, by identifying injustice and providing an endpoint where to aim at, ideal theory is always action-guiding even if it ‘still leave[s] an enormous amount of work to be done by nonideal theory’ (Simmons 2010, p. 32)⁴². Thus, from this discussion, one can conclude that it is mistaken (a) to demand direct practical application from ideal theories and (b) to present ideal and nonideal theories as rivals. Rather, ideal and nonideal theories are to be seen as complementary, that is, as working in tandem for dealing with injustice here and now (see Hamlin and Stemplowska 2012, Swift 2008, Gilibert 2008, Robeyns 2008).

This conclusion, however, can satisfy only the first group of critiques, i.e. those who rightly pointed out ideal theory’s misguidance for dealing with injustice. But it is not enough for dismissing those who endorse the extreme critique, i.e. those who reject ideal theory altogether. In their view, ideal theory is not necessary at all for making the world more just (e.g. see Wiens 2012, Sen 2006, Sreenivasan 2007 cited by Simmons 2010)⁴³. In this context, Amartya Sen’s work *The Idea of Justice* (2009) represents the most elaborate challenge to the assertion that nonideal principles are derived from ideal theory. In it, Sen claims that knowing what a perfectly just society is is futile for reducing injustice in the world. Having a detailed notion of his work will be crucial to evaluate the extent to which it succeeds (or not) in providing a real practical alternative to Rawls’ theory in order to orient justice-promoting action. In addition, the examination of Sen’s proposal is of first importance for this dissertation for several reasons: (1) in contrast to most critics in the nonideal/ideal debate, he does offer an articulated framework aiming to displace a Rawls-like ‘transcendental’ paradigm of justice; (2) it has been regarded as the most important work on justice since Rawls’ TJ; and (3) his work directly links issues of justice to real practical concerns of development, and since his previous work has been extremely influential for development thinking,

⁴² See, for example, Phillips (1985) and Goodin (1995), who show in a more systematic way the difficulties of translating ideal theories into practice.

⁴³ Chapter V deals with the critical tradition which also places their contribution in opposition to ideal theory.

it is extremely relevant to examine what shift it may potentially represent in this direction.

Sen's main critique against theories of justice—from which Rawls is explicitly the main target—is their 'transcendental institutionalism' view of justice which is not appropriate to examine or remediate injustice. First, they are '*transcendental*' because they are concerned with the identification of the nature of the just and as such these theories try to provide an account of the perfectly (and unique) just societal arrangement. But these theories, Sen argues, say little, if anything, about how to compare between different (other than the perfectly just) states of affairs as more or less just, nor do they provide a useful framework on how to achieve this transcendental ideal. That is, they aim to tell us *what* will make a society qualify as just but not *how* to attain it. Second, they are *institutionalist* because the primary concern of transcendental theories is to 'get the institutions right' and thus adequate attention is not given to individual behaviour or 'in the actual societies that would ultimately emerge' (Sen 2009, p. 6). Hence, for Sen, the crux of the matter is that 'transcendental institutionalists seek to identify *a set of perfectly just social institutions* ... [and] [f]or them, societies in the real world are unjust to the extent that they fail to exhibit such institutional perfection' (Valentini 2011, p. 299; emphasis in original).

The second part of this critique (i.e. institutionalism) which is related to the conceptual framework that Sen proposes to reduce injustice will be further discussed in the next chapter. The remainder of this chapter is concerned exclusively with the first part of his critique, the 'transcendental' aspect of Rawlsian-like theorisation, which can be regarded as Sen's point of departure. In this respect, it is precisely the search for perfection which Sen condemns as having a (negative) repercussion for the practical usefulness of theories of justice and not the use of idealisations or abstractions. Sen (2012) differentiates his argument from the ideal/nonideal debate in the following way. He writes: 'An ideal theory need not be a theory of ideal states, nor does a nonideal theory be necessarily a departure from a transcendental approach' (p. 330, footnote 37). Sen understands the feature of 'transcendentalism' as aiming for a perfect standard that cannot be "transcended" (or "bettered") by any other' (Sen 2012, p. 322). In strict terms, this means that the *transcendental* aspect of a theory of justice should not be equated only with *ideal* theory. Rather, transcendentalism can be a trait of both ideal and nonideal theory. As such, Sen's *Idea of Justice*

(2009; IJ from now onwards) embraces the spirit of nonideal critiques but goes beyond these. He finds himself at odds with the mere notion of a perfectly just society. Sen asserts that we do not need to know or agree on what an ideal perfect just society is in order to address the most immediate and urgent cases of injustice that pervade the real world. This in turn directly questions the priority of ideal over nonideal theory⁴⁴.

3.2 Sen's comparative framework: Beyond the transcendental approach?

The problem with transcendental theories, Sen argues, is their starting point. Instead of trying to answer 'What is justice?' or 'What would the perfect arrangement of society be?', a real-world theory of justice should be concerned with making the world more just. Hence, efforts should concentrate in advancing justice rather than striving for the 'perfectly just society'. We do not need an ideal theory to tell us that it is unjust for children to die from curable diseases or hunger; what we need to answer is how this injustice can be improved. That is, Sen urges us to take the unjust (*nonideal*) world as starting point and the removal of injustice as the main concern of justice theorisation. From this standpoint, a rectification of an injustice, for example, the 'eliminat[ion] of widespread hunger, or remov[al of] rampant illiteracy ... yield[s] an advancement of justice' (Sen 2006, p. 217) even if it still leaves us far from a perfectly just world. For this specific task, he argues, what we need is a comparative framework to rank societal arrangements as more or less just, a task for which the transcendental approach is not suitable and not even helpful. In Sen's view, there are two reasons why the transcendental approach is dispensable for this practical purpose: the feasibility and the redundancy constraint (IJ, pp. 10–17).

The *feasibility constraint* expresses Sen's scepticism about the mere possibility of finding a definition of a perfectly just social arrangement or a unique set of principles for justice that trumps all others. Therefore, Sen advocates for the acknowledgement and acceptance of several competing and plural reasons for

⁴⁴ Sen's understanding of ideal theory is narrower than the definition of ideal theory employed in this dissertation. It refers to only one of the two features (i.e. defining what justice is). This chapter takes the feature of transcendental and the feature of ideal as roughly belonging to the same category since both take Rawls as their example par excellence. Later, this dissertation comes back to these concepts to situate Sen's approach.

justice. This complexity is meant to be practically captured with the example of three children (named Anne, Bob and Carla) quarrelling for a flute. Each of the children has a reason to claim the flute (where each of them represents a philosophical perspective). Anne considers that she should have it because she is the only one who knows how to play it. Bob says that he is the only poor person among the three and has nothing else to play with. Meanwhile, Carla claims that she deserves the flute because it is the product of her own labour. Who should keep the flute? To find a solution for this parable, we should not turn to Sen's IJ; rather, he suggests that we should not expect any of them to have a final say upon the others.

The *redundancy constraint* says that even if the identification of a transcendental conception of justice is somehow possible, it would be neither *sufficient* nor *necessary* for comparing between two states of affairs as more or less just.

Sen argues that it is not *sufficient* because '[f]rom a transcendental ... perspective, a society is either perfectly just, or it is unjust' (Valentini 2011, p. 300) and thus it does not provide a framework to recognise partial merits of societies. On this point, Rawls considered the possibility of comparing between different societal arrangements depending on the distance against the perfect model (TJ, p. 246). But Sen rejects this option with a 'firm no' (2006, p. 219). Convincingly, Sen points out various difficulties which might well render this route impossible. For example, instances of injustice can take place within several distinct fields of departure from the ideal (e.g., liberties, resources, opportunities) and there might not be a satisfactory way to compare between them. Therefore, it might not be possible to determine which situation is closer to the ideal⁴⁵. Consequently, Sen concludes that even knowing what the 'best' arrangement is does not give any information about the ordering of two (or more) other sub-optimal arrangements of society short of it. Sen (2006) explains this as follows: 'the fact that a person regards the *Mona Lisa* as the best picture in the world, does not reveal how she would rank a Gauguin against a Van Gogh' (p. 221; emphasis in original).

Nor is a transcendental notion of justice *necessary*, because, according to Sen, the elucidation of the 'best' or the 'right' option is not necessary to compare

⁴⁵ One could argue that some 'extensions' can be developed—such as specifying different weights between different departures—if the transcendental approach is to be both an ideal and a framework for comparisons. However, Sen suggests that these extensions might well be the territory or 'the basic ingredients of a "comparative" rather than a "transcendental" approach to justice' (Sen 2006, p. 220).

between two other non-best options. Relying on a similar exercise, Sen explains, when judging between two alternatives ‘a Picasso over a Dali’, there is no need to identify or invoke the ideal or ‘perfect picture in the world, which would beat...all other paintings in the world’ (Sen 2006, p. 222; see also IJ, p. 16). This position is also well captured by some authors such as Brown (2010) when he writes: ‘In practice, we measure one possible policy against another possible policy, and not against an ideal’ (p. 314). Alternatively, even if we should not go via the transcendental identification to make comparative judgements, Sen concedes that there might still be a place for the transcendental best in the ‘weaker form’ of necessity (Sen 2006, p. 222). This hypothesis questions whether systematic comparative assessments could lead to the identification of the transcendental best. Sen also rejects this hypothesis by acknowledging that it is unlikely that the conditions required for having a robust “well-ordered” ranking’ are met (IJ, p. 102). For example, even in the implausible scenario in which each individual could have a complete ordering in the ranking of all possible social arrangements, this does not guarantee an agreement between all the parties in a specific ordering. Consequently, incompleteness might be an inevitable outcome before arriving at the transcendental ideal.

These constraints (the feasibility and the redundancy) of transcendental theories lead Sen to conclude that ‘the question “what is a just society?” is not...a good starting-point for a useful theory of justice’ (IJ, p. 105). If a theory of justice is to give practical guidance about how to make the world less unjust, then the transcendental route is conceptually flawed. In contrast, Sen insists that a comparative approach—having the notion of injustice as its starting point—does not need, nor does it attempt, to answer this transcendental question. Rather, it starts by asking ‘how would justice be advanced’ (IJ, p. 9). This task is foremost a comparative exercise that can be ‘undertaken without identifying, first, the demands of perfect justice’ (IJ, p. ix). Sen writes:

What is important to note here, as central to the idea of justice, is that we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being *the* dominant reason for the diagnosis of injustice (p. 2, emphasis in original)... The diagnosis of injustice does not demand a unique identification of ‘the just society’ (IJ, p. 100).

By concentrating on the remedial actions needed rather than on the theoretical nuances of a 'totalist' approach (IJ, p. 103), a comparative framework is better suited for reducing injustice. The indeterminacy of ideal theories of justice does not block the possibility of arriving at an intersection of 'partial orderings' in a comparative exercise. Therefore, according to Sen, the transcendental and the comparative approaches are 'analytically disjointed' (IJ, p. ix); they are 'quite distinct... neither approach, in general, subsumes or entails the other' (Sen 2006, p. 216).

It is through these rather definitive statements that Sen aims at displacing Rawlsian-like theorising for addressing 'questions of enhancing justice and removing injustice' (IJ, p. ix). Though related to nonideal critiques, Sen's arguments are easy to distinguish from the previous nonideal criticisms. Sen is not only denouncing Rawls' ideal theory for being impractical for the 'real world' but also advocating for a replacement of the transcendental approach for the purpose of advancing justice.

To the extent that Sen is correct about the *feasibility* and *redundancy* (sufficiency and necessity) constraints, then, his comparative approach would strongly call into question the use of the transcendental paradigm and thus be one step closer to succeed in presenting an alternative route towards justice. Conversely, by failing to defend these constraints, Sen's approach would face immense difficulties to present itself as a real alternative, at least one that can achieve what it sets out to do (i.e. provide a framework to reduce injustice without relying on a transcendental notion of justice). Therefore, before turning to the specificities of Sen's comparative framework, the following section examines the arguments supporting the feasibility and the redundancy constraints. This would indicate whether there is still a fundamental role to be played by the transcendental approach for advancing justice. What is under examination, then, is the claim that 'a comparative theory of justice may be entirely viable and thoroughly usable without containing—or entailing—any answer to the grand question "What is a just society"' (Sen 2006, p. 236).

3.3 The inescapable necessity of transcendental justice

From the ideas presented above, it is possible to capture the way in which Sen contests the absolute priority of ideal theory (over nonideal theory). In the absence of an ideal of justice, Sen suggests, it suffices that there is a shared understanding of something being unjust, even if for different reasons, to call for its rectification. For example, in the case of racial discrimination, some may consider it wrong due to its negative impact on economic growth (associated with utilitarian grounds), others because it violates people's liberties and the principle of equal fair opportunities (Rawlsian), and yet other persons for other reasons. The shared understanding that racial discrimination is wrong would be sufficient to start remedying the injustice. Subsequently, as long as there is a consensus on a different state of affairs where discrimination is less frequent, this would illustrate that injustice can be reduced even if we do not agree on an ideal conception of justice and even if discrimination remains. Although at first sight this proposal might seem promisingly feasible, the following analysis will provide a more informed panorama for its evaluation and conclude that the transcendental approach is still necessary.

3.3.1 Evaluating the feasibility constraint: A long-sighted view

Sen suggests that rather than aiming at selecting a victorious ideal of justice over all other conceptions, we must acknowledge—and accept—the coexistence of 'plural and competing reasons for justice... which nevertheless differ from—and rival—each other' (IJ, p. 12). In IJ, Sen repeatedly advocates for this plurality of reasons (e.g. 'the principles that survive [reasoned scrutiny] need not be a unique set' (p. 45); 'There is no compulsion...to eliminate every reasoned alternative except exactly one' (p. xviii)). This was reasonably defended with the example of three children quarrelling for a flute (above). Yet, although the general idea of plurality of reasons might be difficult to dispute, this section argues that it could also be a mistake to take it as an impasse with such ease instead of engaging in further reasoning about the implications of such a decision. Ultimately, although no solution to the plurality of reasons may be at hand, blind respect for plurality may not be one either.

No doubt, Sen's example of the quarrelling children has been accepted as an argument among some authors, admitting that 'sometimes there is simply a plurality of "right" answers' (Brown 2010, p. 313). Others, nonetheless, see Sen's conclusions of the exercise as misplaced towards Rawlsian theorising or as a too precipitated conclusion to make or as missing the point of ideal theorising. For example, some authors remind us that Rawls himself (in his later work—1996) acknowledges that there is a plurality of reasonable conceptions of justice which can differ from his own proposal and as such his conception was only one of these options (Satz 2012, Gilabert 2012, Valentini 2011). As a result, it will be at odds to accuse Rawls of endorsing the view that there is a unique theory of justice while sentencing others as incorrect (Marjoribanks 2010). Still, Sen suggests that if there cannot be a unique solution to the transcendental question, then Rawls' exercise was doomed to 'get stuck at the very base' (IJ, p. 11, p. 57). This is because, according to Sen, it is incoherent to accept non-uniqueness and yet continue the Rawlsian exercise of 'justice as fairness' *as if* there was indeed a 'complete agreement in the "original position"' (2012, pp. 331–332).

This in turn is presented as one of the strengths of the comparative approach because it does not depend on such uniqueness but on the "intersection partial ordering"—the shared parts of the different rankings' (Sen 2012, pp. 331–332). Because different ideals will tend to conflict with each other, Sen insists, '[w]hat is needed instead is an agreement, based on public reasoning, on rankings of alternatives that can be realised' (IJ, p. 17). But one could still wonder whether Rawls' theoretical exercise really is undermined just because there are other reasonable conceptions of justice aside from his. It is difficult to see what the problem is with offering substantial reasons for one conception and its implications over others. This is precisely one of the features of ideal theories, to offer reasons about possible ways to clarify the balance between competing conceptions (Swift 2008). It is because there are such disagreements that higher abstraction and grander theorisation are needed (Satz 2012, Robeyns 2012, Valentini 2011). Indeed, this is what Rawls' work sets out to do, to present a reasoned discussion about why he thought his conception was the most reasonable given the 'circumstances of justice' and the conditions in the original position (Labude and Pogge 2010).

Thus, what is important to note is that recognising that indeed many theories can be reasonably defended does not take us very far either and it may not be a

sufficient reason to dismiss transcendental theorising altogether. For instance, going back to Sen's example of the flute, one could also make the argument for the need to see beyond the non-solution of this exercise instead of being completely short-sighted about it. Would it not be fruitful to say that given the wide disagreement represented by the three children's different claims (call them, own labour, equality, and virtuosity), additional theoretical discussion is needed to illuminate which of them may or may not be reasonably defended *depending on the context*? It seems that by ignoring this route, Sen underestimates the far-reaching power of these ideal theories in the circumstances of people's lives⁴⁶. For there might be cases in which it is precisely the reliance on any of these theories in making social decisions that *is* or *can be* the main source of injustice (Heinze 2012), and it can be a deeply and well-grounded idea in society that may require transcendental theorising to destabilise it.

For example, one can imagine that in highly unequal countries (like Mexico) there are simply too many things that influence someone's chances in terms of job opportunities, such as whether the person has access to education, her social networks, and even how a person looks. One could argue that, under conditions of rampant inequality, the simple acceptance of a labour-rewarded arrangement of society could end up reproducing and enhancing inequalities. And yet this notion of a labour-rewarding arrangement might somehow be defended as a reasonable conception of justice by the majority of people so that it remains the dominant idea underlying the social decisions about how this unequal society is organised. This in turn sheds light on another critical issue, which emphasises the relevance of going beyond the uncritical acceptance of a plurality of reasons. This is the fact that the dominant conception of justice also informs the identification of an injustice and consequently the proposed solutions to rectify it (e.g. by influencing the design of policies, institutions and so forth). The problem is that these decisions may have further unintended impacts on other sectors of the population beyond the immediate injustice that was originally targeted.

This can be further illustrated by Sen's appraisal of the case of discrimination. As argued earlier, from Sen's comparative perspective it would not matter that different persons may condemn racial discrimination on the basis of different principles. Now, let us assume that there was indeed a plurality of reasons behind this judgement, but for the sake of the argument, let us assume further that the

⁴⁶ Or probably he overestimates (as will be suggested in the next chapter) the reach of reason.

large majority judged discrimination wrong due to its negative impact on economic growth. This seems perfectly possible within Sen's rationale. Racial discrimination was singled out as unjust even in the absence of an ideal of justice and this is sufficient to motivate action to remedy it. What is the caveat in this example? The problem with what seems to be an otherwise positive illustration of Sen's ideas is that, amidst the plurality of reasons, there is a dominant underlying ethical framework (i.e. utilitarianism) for identifying the wrongdoing *and* thus for informing the way forward for rearranging society. (And it is utilitarian thinking that has motivated much of the discussion on social justice to begin with.) Moreover, the proposed solution to remedy it, besides affecting (positively hopefully) those directly vulnerable to discrimination, can potentially spill over (negatively) to other areas of society. As Simmons (2010, p. 22) claims: '[t]here is no reason to suppose in advance that justice in one domain is independent of justice in other domains' (see also Boot 2012, Robeyns 2012, 2008).

In other words, once an injustice is identified, there are good reasons to believe that the answer to the question *why* we should remediate it will invariably have an effect on the *how* to remediate it⁴⁷. That is, it is not only about acknowledging *that* such and such a case is unjust but also about *why* is unjust (to paraphrase Swift 2008⁴⁸). This line of argument explains why one could suggest that Sen's account of the flute and his quick acceptance of a plurality of reasons can be short-sighted—which is surprising since there is no doubt that Sen has taught us a lot about the importance of paying attention to the consequences. As such, one could argue that Sen's conclusion is myopic in regard to the great significance of the transcendental exercise of presenting reasons in favour of one set of ideals over others.

Although the discussion on this topic might seem somewhat misplaced (since Sen's case was about the unfeasibility of arriving at a unique set of principles rather than suggesting that transcendental thinking was not valuable in itself), it is important to bear in mind that this is one reason (of the two) why he thinks transcendental theory *is* dismissible *for* the comparative exercise⁴⁹. The argument

⁴⁷ This relationship between the diagnosis of injustice and the remedies will be an important aspect to get the guidance of justice-promoting interventions right (chapter V).

⁴⁸ Swift (2008) writes: 'as long as philosophers can tell us *why* the ideal would be ideal, and not simply *that* it is, much of what they actually do when they do "ideal theory" is likely to help with the evaluation of options ...' (p. 365; emphasis in original).

⁴⁹ Sen (2012) insists that he does not intend to suggest that transcendental theorising is redundant, all things considered. Rather, his point is that it is redundant *for* the comparative exercise. As this analysis suggests, this might also be questionable.

presented here might suggest otherwise. Of course, this does not imply that we can expect, at least in the near future, that it is feasible to have a unique conception of justice, as Sen suggests. Yet Sen's feasibility constraint might not in itself undermine the intrinsic and practical value of the goal of ideal theorising on discussions about justice (and this is probably why Sen is sceptical rather than conclusive about the feasibility constraint). Nevertheless, although this brief discussion tentatively suggests that transcendental theorising might be relevant for the comparative exercise, this may not be enough to show that it is indeed expedient for the aim of reducing injustice. Indeed, Sen argues that, even if the identification of a transcendental conception of justice were possible, it would be insufficient and unnecessary for the comparative exercise. The next sub-section examines this claim.

3.3.2 Evaluating the redundancy constraint: A reappraisal

Sen makes two distinct practical judgements against the transcendental exercise: 'A transcendental identification is...neither necessary nor sufficient for arriving at comparative judgments of justice' (IJ, p. 102). The (in)sufficiency of transcendental justice to provide an all-purpose framework to advance justice reaffirms the previous discussion on the ideal/nonideal debate. Sen's arguments make clear that a transcendental identification is not *all* we want from a theory of justice because it does not tell us 'how we should assess whether some social change would advance the cause of justice or hinder it' (Sen 2006, p. 236)⁵⁰. There is little opposition to this conclusion. But although the sufficiency argument may not be disputable, the claim that a (Rawlsian) transcendental theory is not necessary for comparative judgements of justice is what is problematic (e.g. see Boot 2012, Robeyns 2012, Stemplowska and Swift 2012, Simmons 2010, Marjoribanks 2010, Valentini 2012, 2011, Hamlin and Stemplowska 2012, Schemmel 2011, Osmani 2010, Biondo 2010, Stemplowska 2008). It is simply not self-evident why we can, should, or must exclude transcendental principles from the evaluation of two other non-best alternatives.

⁵⁰ Boot (2012) and Valentini (2011), however, illustrate that some comparisons of nonideal alternatives can be extrapolated from Rawls' theory. Still, the point that Sen is trying to make is that a transcendental theory does not intend to solve the problem of how to compare between infinite pairwise possibilities and thus those theories are insufficient for the comparative exercise in most cases.

Sen argues that to compare two options there is no need to invoke or even know what the best of all options is. Reflecting further about this argument indicates that it may not be as straightforward as it seems. For instance, if we take Sen's example of art as a real practical exercise, it is not at all clear why, when valuing between a Picasso and a Dali, it will make no difference to know which the 'best' of all existent pictures is. If that picture would set *what*—if possible—other paintings should strive for and *why* this is so, surely it would have a role to play. In fact, to arrive at an 'intersection of partial orderings', that is, to agree whether a Picasso or a Dali is to be superior, first we would have to know under which *principles* those paintings have to be evaluated. It is not irrelevant to know what we are striving for while ranking the two possibilities (e.g. precision, abstraction, aesthetics, or all of those and what weight each should have) (see Boot 2012 for a similar point).

In his defence, Sen could assert (and this would be 'an assertion rather than something that is established in any clear way'; Sen 2006, p. 225; IJ, p. 105) that there could be an agreement on both (*principles* and the choice between Picasso or Dali) after 'public reasoning'. Note that the agreed principles to compare between the two paintings, however, would need to be for that specific exercise alone; otherwise, Sen would be suggesting that a transcendental identification of principles is possible via public reasoning (which is inconsistent with his own feasibility constraint). *If* this were the case, the problem is that these comparative improvements may also be short-sighted and hence might run counter to the long-term goal of making the world less unjust. As stated before, there is simply no reason to assume that justice-enhancements 'can be pursued "partially" or in piecemeal fashion' (Simmons 2010, p. 22; see also Stemplowska and Swift 2012, Gilibert 2012, Pogge and Alvarez 2010). So what this exercise shows is that even if there is *no* need to identify the transcendental best picture of all, there *is* indeed a necessity to know which principle(s) will make a picture qualify as the best (or at least better than another). And this task to develop principles, integrate them, and give reasons to support them is precisely the territory of transcendental (ideal) theories (Boot 2012).

This reasoning becomes even clearer in the mountains example that Sen presents. He says knowing 'with great certainty, that Everest is the tallest mountain in the world...is neither needed, nor particularly helpful' to compare between two other, smaller mountains (Sen 2006, p. 222; IJ, p. 102). In this case,

we know which one is taller only because they are being compared in terms of height, and we know objectively what height is and how to measure it. But they could also be compared on the basis of a different criterion and the ranking between the two mountains could change (Boot 2012). Besides, contrary to the definition of height, the mere concept of justice is in dispute and it is not unidimensional⁵¹. Hence, even scholars who are sympathetic to Sen's proposal concede that transcendental *principles* (rather than the distance from the ideal societal arrangement as a whole) can be useful 'for the comparative evaluation of less than perfectly just situations' (Osmani 2010; p. 606).

It seems then that Sen's rejection of the necessity argument might not be sufficiently supported. It should therefore not be taken for granted that his comparative framework could succeed in its task of advancing justice without relying on transcendental theories. Of course, in a strict sense, a comparison between two alternatives can be done without having any ideal in mind. However, it is hard to think that this is what Sen is trying to defend as this would mean that he is willing to leave the value of justice to the toss of a coin (i.e. whatever outcome emerged from the comparative exercise). Yet, not surprisingly, this interpretation of Sen's work is not easily discarded. For example, Biondo (2010) writes:

Following Sen's argumentation it seems that any reason is relevant [to choose between alternatives]; what matters is to reach an agreement. The possibility to achieve an agreement seems to be the only valuable condition for a decision if, just as it seems, we do not have a shared ideal about what is to be considered good in that circumstance (p. 193; personal translation).

In the following chapter, when scrutinising Sen's conceptual framework, we will see that this might not necessarily be Sen's position in reality. However, his reliance on partial agreements through public reasoning remains problematic. As will be explored, the problem is that an agreement under the messy circumstances of the 'real world' can hardly guarantee that the outcome will be in line with justice, as many historical events show (e.g. Hitler being considered the 'best' leader by the majority of the German population). For the moment, one can conclude that, if one accepts the reasons presented here about the necessity of

⁵¹ See also Simmons (2010) for a refutation of this exercise of the mountains.

transcendental theories, then Sen's confidence in 'partial orderings' might not be able to escape transcendental theorising if he is committed to the aim of *reducing injustice*.

From examining Sen's arguments about the feasibility and redundancy constraints that transcendental theories face for the specific purpose of pairwise comparisons, one can derive the following conclusions. First, transcendental theorising has an intrinsic and an instrumental role for issues of justice regardless of the feasibility constraint—and even in 'evident' cases of basic justice. This was justified due to the interconnection between the grounds under which an injustice is identified (*why* to remediate it) and the implementation of the remedies (*how* to remediate it). Second, a comparative exercise necessarily involves taking into account—at least—some transcendental information such as its ideal principles. This is related to what was earlier called the 'target' role of transcendental theories. Thus, even in the presence of supposedly indisputable cases of injustice, such as racial discrimination, for which apparently the 'urgency' role of transcendental theories is unnecessary, a transcendental identification was deemed necessary for its 'target' role and for the 'ground' under which injustice is identified.

One can therefore conclude that whereas the *sufficiency* argument shows that the transcendental answer to the question 'What is a just society?' is not *all* we want from a theory of justice, the *necessity* argument shows that the answer to 'What makes a society just?' (i.e. the principles of justice) is *part* of what we want from an effective approach towards advancing justice. From this, it follows that the question that Sen finds redundant is *not* 'What is a just society?' but rather the highly specific question 'What is the perfectly just arrangement of institutions that guarantees justice regardless of the context?' and this is something that Rawls' ideal theory does not answer. That is, Sen wrongly misrepresents Rawls' 'transcendental' solution as being conformed by a unique universal set of perfect institutions (hence Sen's labelling of 'transcendental institutionalism'). But, as Valentini (2011) underlines:

... on a Rawlsian view, the institutional arrangements which make a society just vary depending on the nature of the society in question, the character of its citizens and so forth... In short ... there is no such thing as an "ideal set of institutions" in Rawls's theory, but rather a set of lexically

ordered principles (equal basic liberties, fair equality of opportunity, and the difference principle) which can be realized by a number of different institutional arrangements (p. 304; see also Freeman 2012).

3.4 Sen's *Idea of Justice* as a nonideal approach to justice?

The previous section showed that transcendental (ideal) principles do have something to say in the comparative framework to advance justice. They are practically relevant not only in the ranking of alternatives by providing the principles of evaluation but also in partially determining the remedy (or the action needed) to rectify an injustice. At first, these inferences might sound as if a Rawlsian transcendental theory of justice is valuable solely for its usefulness to the comparative exercise. This conclusion is, however, better to be avoided. The features highlighted here make reference only to its input for the specific practical demands of comparative justice. The fact that a transcendental theory is more than just an aid to the comparative exercise may be clearer if we take into account two implicit ideas. First, by failing to demonstrate that transcendental theories are unnecessary for partial orderings, the comparative framework fails to be a real alternative to Rawlsian-style transcendental theories. Second, this shows that a comparative framework may not be able to be sufficient on its own for the purpose of reducing injustice. Ultimately, this analysis reaffirmed the previous conclusion that Rawlsian-like theories of justice function like an all-encompassing frame for justice-enhancing efforts. Similar to the ideal/nonideal debate, it seems thus that completely rejecting transcendental (ideal) theories is akin to failing to appreciate their non-negligible role for matters of practical justice, which in turn can be counterproductive.

This indicates that Sen's comparative framework might best be seen as a *potential* nonideal theory that can complement, rather than replace, the inescapable incompleteness of transcendental theories. Surely, that Sen's proposal can be easily related to nonideal theories is not a big surprise as he constantly underlines his concern for being a practical and reality-grounded approach ('the main use of the theory of comparative justice would be in making comparisons between *feasible* possibilities' [p. 62, emphasis added]; 'if we are trying to wrestle with injustices *in the world in which live...*we also have to think about how institutions should be set up *here and now*' [p. 81, emphasis added]).

As a result, consistent with the ideal/nonideal debate, this implies that a transcendental ideal theory of justice is to be seen as prior to nonideal theory, and it could be in the latter that the value of Sen's approach lies. Indeed, it seems that Sen's comparative framework fits well with the kind of complement that ideal theory necessitates (see also Pogge and Alvarez 2010). In Rawls' (1993) words:

Nonideal theory asks how the ideal conception of the society of well-ordered peoples might be achieved, or at least worked toward, generally in gradual steps; it looks for policies and courses of action that are likely to be effective and politically possible as well as morally permissible for that purpose. So conceived, nonideal theory presupposes that ideal theory is already on hand. For until the ideal is identified, at least in outline, nonideal theory lacks an objective—a goal—by reference to which its questions can be answered. And while the specific conditions of our world at any given time—the status quo—do not determine the ideal conception of the society of well-ordered peoples, those conditions do affect answers to the questions of nonideal theory (p. 60).

This quote and the analysis presented above do give the impression that it is this nonideal effort which Sen's comparative approach takes on board. But we should not jump too fast in that direction. In order to consider Sen's comparative approach as a nonideal theory, one first needs to show that it can be more than simply a comparative tool. Indeed, this chapter showed that, besides being concerned with the practical aim of reducing injustice here and now, nonideal theory has to show that it can go in the direction of an ideal of justice. For, as Rawls suggests in the above quote, without an ideal, nonideal theory lacks 'an objective—a goal—by reference to which its questions can be answered'. That is, one could only expect that the principles (or the methodological content) that motivate a nonideal approach cannot but be in line with the principles of justice identified by a transcendental ideal theory.

Thus, in order to assess Sen's approach as a nonideal theory, it is important to conceptualise formally what exactly the role of a nonideal approach is for the purpose of advancing justice. This will illustrate further that '[n]on[ideal] theorising of justice *entails but is not limited to* the comparative approach to justice'

(Robeyns 2012 p. 160; emphasis in original)⁵². The following chapter expands on this in order to assess whether Sen's methodological proposal is well suited as a nonideal theory for reducing injustice.

⁵² Robeyns' original quote used 'Non-transcendental' theorising instead of 'Nonideal' theorising. However, this is at odds with the way in which these terms are understood here. This dissertation will argue that the use of this denomination (transcendentalism) is not confined to ideal theory (chapter IV).

IV. Sen's transcendental nonideal approach

The previous chapter established a more formal distinction between ideal and nonideal theory. After this conceptual clarification, demanding (full) practical guidance from ideal theories to reduce injustice as we experience it here and now seems to be misplaced. However, the pressing demand for practical assistance in the task of dealing with injustice remains. Theorising how to transform unjust situations is the embodiment of the urgent normative claim of nonideal theories (regardless of whether an ideal just society is assumed to be at hand or not). This is the territory in which nonideal theories are discussed and assessed. This chapter is concerned with the nonideal component of the comprehensive framework presented in the introductory chapter, its content, its specific role and its usefulness for the aim of counteracting the reproduction of injustice. Particularly, it evaluates Sen's *Idea of Justice* (IJ) in such an endeavour. The previous chapter concluded that Sen's critique failed in its attempt to displace ideal theorising, and reasons were presented to categorise Sen's approach as a nonideal possibility to advance justice. This is precisely what is analysed here, his nonideal framework per se, what is referred to as his 'methodological proposal' (i.e. its conceptual framework to enhance justice).

The chapter starts by introducing a formal (even if broad) understanding of what is expected from a nonideal theory. It then presents Sen's methodological proposal in detail in order to evaluate to what extent it could be a useful proposal to deal with injustice in the world. In this process, it analyses Sen's comparativist proposition in its original form, that is, as a self-standing proposal. The chapter spells out the non-negligible vulnerabilities of Sen's approach, its highly demanding content for it to be practically useful here and now, and how an ideal theory can aid Sen's methodological proposal in this task. The chapter advances two main conclusions: (1) it reaffirms the complementarity between ideal and nonideal theory, hence the need for a dual framework; and (2) it identifies Sen's IJ as a transcendental nonideal theory. This implies that, even when connected to an ideal theory, it still needs further analysis of the extent to which it succeeds in offering useful guidance in the real world.

4.1 The nonideal level of justice

In order to identify Sen's approach as a nonideal theory, it is important to define what a nonideal theory is and what it should do. This section discusses a conceptualisation of nonideal theory and its role in developing a comprehensive framework able to orient justice-enhancing political action. Following the discussion of the previous chapter, it is possible to delineate the boundaries and the characteristics that nonideal theories must comply with. Broadly defined, the features of nonideal theories are the following:

- 1) Feasible: the conceptual framework of nonideal theories is necessarily situated within the real (nonideal) circumstances of the world as we know it (i.e. the *feasibility* requirement).
- 2) Transitional: nonideal theories deal with the identification of procedures, achievable policies, background conditions, concepts, and/or outcomes that best serve the aim of advancing justice/reducing injustice while leading towards the ideal (i.e. the *transitional* requirement).
- 3) Morally desirable: nonideal theories are complementary and thus connected to ideal theory. As such, their propositions have to be in line with the demands of ideal theory; that is, they need to take into account the moral costs and moral benefits involved in the transition to the ideal (i.e. the *moral desirability* requirement).

These features reiterate the point that the complementarity between ideal and nonideal theory is essential for reducing injustice. Nonideal theory is complementary because it deals with the question of *how* to advance justice once an injustice is identified; and it is transitional because it has to shed light on morally desirable courses of action that best serve the path towards the ideal, i.e. once we know *what* we should aim for and *why* (see Gilabert 2008 for a helpful discussion on this point). Therefore, a proper nonideal theory is one that simultaneously embodies these three requirements. These characteristics are also expressed in a very general form so that there can be some differences in

their degree of fulfilment. But, generally, this nonideal level remains primarily normative⁵³; it theorises about the best alternative to move towards the ideal.

With this initial layout of nonideal theory, it will be possible to analyse Sen's approach and his methodological proposal. Of course, as originally presented, Sen's comparative framework does not see itself in these terms. Nevertheless, one should note that there is no fundamental restriction in his approach to foreclose this possibility. As with his previous well-known work on capabilities, Sen's position is open to interpretation⁵⁴. In relation to his capability approach, this flexibility is seen as one of its biggest strengths (Robeyns 2016, Deneulin 2014b, Robeyns 2006); the question is whether this flexibility can also be a quality within his overall approach to justice. The analysis in this chapter will suggest that Sen's attempt to assist in an effective way in the promotion of justice is better realised by recognising formally the nonideal condition of his proposal. Although this is something that Sen himself rejects, this chapter shows that it could be a much more fruitful understanding of his position.

4.2 Sen's methodological proposal to advance justice

This section deals with the content of Sen's framework (i.e. how injustice can be reduced). Consistent with nonideal theories, Sen's primary concern is to propose a more practical framework closer to people's lives and to actual injustice-reduction policies. For this purpose, he proposes a comparativist method. Hence, what composes Sen's methodological proposal is the conceptual framework that enables this comparative exercise to be put into practice.

As mentioned in the previous chapter, Sen expresses his critique of Rawlsian justice with the dual concept of 'transcendental institutionalism'. The first of these concepts corresponds to his point of departure—which was demonstrated to be flawed—whereas the second part of his critique (institutionalism) is related to his methodological position. In essence, it calls for a shift of the subject matter of justice. Particularly, it calls for a view of justice that is 'ultimately connected with

⁵³ Robeyns (2008) sees nonideal theory as containing two aspects: a theoretical aspect and an empirically based aspect. While acknowledging the significance of both aspects, the focus here is solely on the former: the nonideal level of theorisation.

⁵⁴ For instance, further development of his conception of public reasoning is needed. (For developments in this direction, see Crocker 2012, 2008, 2006.)

the way people's lives go' (IJ, p. x) and not merely with institutions (as in the Rawlsian conceptualisation of the basic structure of society). He refers to his approximation as a 'realization-focused understanding' (IJ, p. 7) of justice. With this move, Sen invites us to regard justice as a broader concept which, although involving issues about how institutions should be arranged, is more concerned with the kind of lives that people can actually lead within those institutions, what he calls 'social realisations'. This distinction is further illustrated by the use of two Indian concepts which refer to different conceptualisations of justice: *niti* and *nyaya*. The former is concerned with the institutional organisation and its corresponding behavioural rules, whereas the latter (*nyaya*) is related to Sen's own conceptualisation in which the scope of evaluation is the broader social realisation that ultimately emerges from the institutional base (e.g. see p. x, p. xvi, pp. 6–8, p. 18, pp. 67–69, pp. 82–83, p. 86).

One could note, then, that Sen's methodological core is the desire to connect the conception of justice with people's *actual lives* by taking into account the actual outcome generated in a social context. At first, this acknowledgement places Sen's comprehensive view of justice at risk of perfectionism and consequentialism. Indeed, his well-known capability approach—whose role is determinant in Sen's IJ—can be interpreted in this way and has been interpreted in such a way before (e.g. Deneulin 2002; see also Robeyns 2016). However, Sen tries to avoid these charges by placing himself within the liberal perspective via the full content of his methodological proposal, i.e. the relevant aspects that form the toolkit which would guide the course of action of his proposal. In general, Sen's comparative exercise to advance justice is possible via three aspects: reasoning, agency, and freedom as capability.

4.2.1 Institutions as instrumental

Sen's IJ is concerned with something more than striving for a just 'basic structure of society'. The reason, he claims, is that even if institutions could be perfectly arranged according to an ideal conceptualisation of justice, there is nothing that can guarantee either the complicity of individuals to such institutions or that the results would be successful in ameliorating people's lives. These worries have two important implications. First, it implies that taking notice of actual behaviour of individuals is as necessary as taking notice of the institutional context for a just

society; second, it implies that outcomes are non-negligible in the evaluation of justice⁵⁵. This line of reasoning can be summarised by the following quotes:

There are crucial inadequacies in this overpowering concentration on institutions (where behaviour is assumed to be appropriately compliant), rather than on the lives that people are able to lead (IJ, p. xi).

The nature of the society that would result from any given set of institutions must, of course, depend also on non-institutional features such as actual behaviours of people and their social interactions (IJ, p. 6).

... institutions have to be chosen not only in line with the nature of the society in question, but also co-dependently on the actual behaviour patterns that can be expected even if—and even after—a political conception of justice is accepted by all (IJ, p. 69).

In this way, Sen's IJ asks us to see institutions as merely instrumental in the pursuit of justice, that is, as assistants in the promotion of justice rather than being treated as 'good in themselves' or as 'manifestations of justice' themselves (IJ, p. xii, 82–83). Attention should be shifted from the process of bringing justice where institutions are merely instrumental to the final result of what really happens to people. Using Sen's own conceptualisation, the idea is that a just *niti* does not guarantee a desirable *nyaya*. For example, in Mexico, there are manifold of examples of formal institutions being insufficient to guarantee the desired behavioural outcome, such as non-discriminatory laws. But although this distinction is intuitively sound, one could also wonder what exactly a desired outcome means? Is Sen implying that the evaluation should be based on achieving the 'right' outcomes? In other words, is he advocating in favour of going back to a consequentialist mode of evaluation such as those which were strongly criticised by Rawls?

Sen asserts that justice evaluations do have to focus on outcomes. But this is not in the sense of their usual conceptualisation, which is as merely 'culmination

⁵⁵ Sen himself recognises that this is something that Rawls does not totally disregard as he (Rawls) clearly states that individual behaviour has to comply with the requirements of justice identified in the original position and that the principles themselves make 'room to build in sensitivity to behavioural' concerns (IJ, p. 78). Still this acknowledgement might not be sufficient because Rawls' primary concern was to define what would make a society qualify as just and thus what principles should be honoured and embodied in the basic structure of society (while assuming people's compliance). (See also Sagovsky 2006.)

outcomes', meaning, simple end results that do not take into account any other relevant information about how those outcomes were achieved (IJ, p. 215). This is the kind of information that characterises consequentialism in the narrow understanding of utilitarianism. However, Sen argues, there is nothing that impedes including more important information into the evaluation of a state of affairs, such as issues of fairness, freedoms, and rights, which are extremely relevant aspects for questions of justice. Sen calls this broader understanding of consequentialism 'comprehensive outcomes'. These are evaluations which take note of the process leading to a 'culmination outcome' (see also Sen 1999a, p. 27). It is this notion of 'comprehensive outcome' which allows us to capture the notion of social realisations in the sense of *nyaya* where not only 'culmination outcomes' matter but also actions, relations and agencies matter as part of the process. This notion of paying attention to the end result as well as to the process leading to it is a chief part of Sen's overall approach. For instance, it is crucial for understanding his conception of freedom and its importance for the comparative evaluation.

4.2.2 Freedom as capabilities

So far, according to Sen, justice has to be concerned with social realisations which account for what comes out as a result of a given set of institutions, and this in turn has to be appraised via comprehensive outcomes in which not only the result but also the process is taken into account. Yet, despite these clarifications, it is still not clear what form these processes and outcomes should take to be acceptable. That is, what would render any social realisation a good or a desirable social realisation? What would make a social realisation better in comparative terms than another? In this regard, it was pointed out earlier that Sen's preoccupation goes beyond institutions as they fail to capture adequately what really happens to the people living within those institutions. Hence, in Sen's account, what really matters for assessing social arrangements are individuals, specifically, 'the freedoms that [individuals] actually have to choose between different kinds of life' (IJ, p. 18).

Thus, in line with Sen's previous work on development (see Sen 1999a; see also 1999b, 1990, 1985, 1980), enhancing people's freedom is to be the ultimate criterion to judge a social arrangement to be more just than another. In this way,

Sen directly reconceptualises the notion of development as a matter of enhancing justice through the expansion of individual freedom. Freedom is seen as valuable in two ways: It is valuable regarding the real opportunities to choose between different kinds of life and ends as well as in the process itself of creating and obtaining those opportunities. Freedom therefore has two different aspects: the opportunity and the process aspect. This distinction is crucial for Sen's understanding of what being free really means and thus for his whole approach, for three fundamental reasons: (1) It provides a broader scope for appraising different states of affairs, (2) it highlights the need to capture this understanding of freedom in the valuation of comprehensive outcomes through a certain metric, and (3) it emphasises individuals' agency in both instances: in the states of affairs themselves to choose the life a person has reason to value and in the process of achieving a certain state of affairs⁵⁶.

To illustrate the relevance of both of these aspects of freedom, let us suppose a society, such as Mexico a few decades ago, where ethnicity affected the possibility of being educated since there were no schools near indigenous communities. Let us then suppose that rights and liberties for indigenous education were formally and institutionally settled so that schools were constructed in indigenous communities. However, despite having this formal possibility to be educated, this did not necessarily guarantee that indigenous children would attend school. According to Sen, this highlights the problem of a *pure* institutional focus, since it would assume that justice has already been done (though this is debatable from the Rawlsian approach). Yet, as Sen would rightly argue, this conclusion misses something important because this outcome (indigenous children not attending school) can be the result of other social processes and social relations which thwart their right and liberty of going to school. One possibility is that given their long history of repression and discrimination, or owing to high levels of poverty which push children into work, indigenous people might simply not exercise their liberties and in consequence they simply continue the uneducated lives they have led so far.

From Sen's perspective, the common ground in both of these alternative scenarios is that there is a lack of real freedom for indigenous people to choose; the opportunity in the formal sense to be educated exists, but they do not have a

⁵⁶ It is important to note that this agency aspect is a feature of both the opportunity aspect and the process aspect of freedom.

real choice to be educated. Therefore, to understand this situation accurately, it cannot be reduced to either solely the process or solely the culmination outcome. This is because both—having the opportunity to be educated and having the real choice to do so—are critically important to evaluate a state of affairs in the light of justice. Consequently, having a certain way to adequately capture this situation cannot be but central to any framework aiming to advance justice or reduce justice in the real world⁵⁷.

Hence, if the latter situation is considered relevant from the point of view of justice, then the question which arises is: which kind of measurement best captures these aspects of freedom that Sen is concerned about (the real freedom someone has to achieve a valuable goal in real life)? The answer to this question is quite meaningful for a nonideal approach as it determines how justice is to be assessed in practice. (That is, whereas the ideal aspect of justice responds to ‘what should we aim for and why?’, an essential aspect of nonideal theory is to respond to ‘how do we assess justice improvements or fall backs?’) As such, it determines which specific information is considered pertinent to compare in order to judge whether a specific social or personal situation is more or less advantaged than another in terms of freedom. It also serves as a criterion for discerning between valid or invalid claims of justice in order to redirect political action in the relevant direction. In short, it determines the metric—or what is sometimes called the space of evaluation or the ‘informational basis’—of an approach to justice.

In this regard, the two main contenders for answering the previous question and thus presenting a freedom-based metric are Rawls’ primary goods and Sen’s notion of capability⁵⁸. Both are characteristically concerned with advancing human freedom but in a somehow different way. Sen makes the distinction between Rawlsian primary goods and his capability approach by contrasting a resource-based and a freedom-based metrics respectively. As the name suggests, a resource-based assessment of justice is considered to direct its attention towards all-purpose *means* to freedom, whereas his own freedom-based assessment focuses directly on human lives themselves, on ‘what people can obtain *from* the

⁵⁷ In the example, only part of the agency aspect of freedom (i.e. having the choice or not) is taken into consideration. Nevertheless, how the decision about intervening in the liberties of indigenous people to be educated was made and how those opportunities were created are also significant parts of the process aspect of freedom and thus of agency.

⁵⁸ Rawlsian primary goods are not very relevant to his ideal principles of justice, though they are very relevant to the nonideal aspect of his theory since they are considered his main metric for distributive issues. For further information about Rawls’ nonideal aspect, see, for example, Culp (2015), Freeman (2012), Fuller (2012), Simmons (2010), among others.

means...[or] the *extent* of the freedom that a person actually has' (Sen 1990, p. 115; emphasis in original)⁵⁹.

On the one hand, as briefly mentioned in chapter II, Rawlsian primary goods are considered to be means or resources that 'every rational [wo]man is presumed to want' (TJ, p. 62) to advance different life plans (i.e. ends/goals/objectives) along with the two moral powers that a person has (the capacity to rationally revise one's ends and the capacity for a sense of justice). These primary goods include basic liberties, income and wealth, freedom of movement and choice of occupation, powers and prerogatives of offices and positions of responsibility, and the social bases of self-respect (TJ, p. 62, 90–95). On the other hand, Sen argues that attention should not be bestowed to the *means* themselves but rather to what the person is actually able to *do* and *be* with those goods, that is, to the actual freedom someone has to achieve valuable *doings* and *beings* (e.g. being able to be educated, be healthy, walk, read, and spend time with family and friends). Hence, for Sen, a capability-based assessment focuses on the real opportunities someone has (i.e. freedom) to choose between different combinations of *beings* and *doings* that people have reason to value. Sen refers to the various (infinite) *doings* and *beings* as 'functionings' whereas the actual freedom (or the substantive freedom) to achieve them would be the corresponding capability. The distinction between functionings and capabilities can be further illustrated by referring to the distinction between culmination outcomes and comprehensive outcomes mentioned above. Whereas a focus on culmination outcomes would be akin to a focus on 'functionings', the concept of capability would be more akin (though not perfectly) to the notion of comprehensive outcomes (particularly to the opportunity aspect of freedom) (IJ, p. 232). Elsewhere, Sen has defined these concepts as follows:

Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles)... While the combination of a person's functionings reflects her actual achievements, the capability set represents the freedom to achieve: the alternative functioning combinations from which this person can choose (Sen 1999a, p. 75).

⁵⁹ On the distinction between a 'resources-based' metric and the capability-based metric, see also Sen 1999a, pp. 72–73, Sen 1999b, IJ, part III, especially chapter 12, as well as other references included in this section.

[Capability is the] ‘actual freedom of choice a person has over alternative lives [functionings] that he or she can lead’ (Sen 1990, p. 114).

Consistent with the discussion above, Sen maintains that it is in the capability space that a freedom-based assessment of justice should focus and not in the resources someone holds or in the functionings or achievements themselves. That is, it is not the actions or states of being themselves (being educated or healthy, walking, etc.) that matter to make interpersonal comparisons but the capability to achieve them (being able to be educated, being able to be healthy, being able to walk, etc.).

The debate between Rawls’ primary goods and Sen’s capability approach as metrics of justice continues today but this dissertation does not engage with it (see Pereira 2013, Brighouse and Robeyns 2010, Robeyns 2009b, Sagovsky 2006). Only the main arguments and those features considered to be relevant to the dissertation’s purposes will be discussed. Sen’s argument can be reduced to the assertion that, by focusing on the means to freedom and not on freedom itself, a resource-based metric does not capture the interpersonal variability to successfully convert such means into valuable ends adequately. For example, the ability to convert income and wealth into actual wellbeing (doings and beings), such as spending time with friends at night, will vary across people (e.g. if a society imposes more restriction to women than to men). In this respect, Sen identifies different sources for intersubjective variability in the conversion of a bundle of goods into actual functionings that people may value doing/being. These are generally referred to as ‘conversion factors’, which include personal factors (e.g. age, proneness to illness, physical conditions), social factors (e.g. social norms, public services, social valuations), and environmental factors (e.g. climate, geographical location) (Robeyns 2011, 2005; see also IJ, p. 255; Sen 1999a, pp. 70–71)⁶⁰.

Rawls’ response to such criticism is signalling that focusing on a set of capabilities will promote a certain (fully or partial) comprehensive conception of a good life and thus fail to respect the plurality of conceptions equally⁶¹. Indeed, someone

⁶⁰ This classification follows Robeyns’ three categories of conversion factors because it subsumes well Sen’s usually vague classification which is sometimes presented in four or five categories.

⁶¹ According to Rawls (1996, p. 13), ‘[a] moral conception is...comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is *fully comprehensive* if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception

could argue that implicit in Sen's criticism of Rawlsian primary goods is a normative demand about what those 'goods' (liberties, opportunities, power and prerogatives, income and wealth, and the social bases for self-respect) have to do for people's lives in order for them to be considered well used.

Sen evades such a criticism by emphasising that someone's capabilities reflect 'a person's *freedom* to choose between alternative lives (functioning combinations), and its value need not be derived from one particular "comprehensive doctrine" demanding one specific way of living' (Sen 1990, p. 118; emphasis in original). Rather, Sen's critique of primary goods is that they fail to recognise that persons are different and as such 'equality in holdings of primary goods or resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons' (Sen 1990, p. 115) regardless of the comprehensive good they pursue. That is, even if two persons are guided by exactly the same comprehensive view or by a different one, a disadvantaged person (e.g. a person with a congenital illness or someone in special social circumstances) will always achieve less from the same amount of goods than others (see also Sen 1980). As the categories of conversion factors highlight, the point is that achievements can be affected by different personal, environmental, or social processes which are independent from any comprehensive notion of the good (see also Pereira 2013). In this way and by repeatedly emphasising that the focus is on freedom understood as capabilities and not in achievements themselves, Sen seems to avoid the charge of perfectionism (i.e. promoting a partial comprehensive view). For this reason, he argues, the metric of capabilities is to be superior to that of primary goods.

Still, whether primary goods succumb to the conversion difficulties that capability scholars point out remains controversial. There are, however, some conclusions (even if partial) one can derive from this debate. In general, it appears to be fairly accepted that capabilities are better suited to appraise the real facts and the social circumstances that could facilitate or obstruct the freedom of individuals in *real life*. In other words, focusing on the real freedom that people actually have (i.e. capabilities) to *be* or *do* this or that, rather than focusing only on the resources or means available to people, shows more sensitivity to capture people's *real-life* vulnerability to different social circumstances (Pereira 2013; see also Robeyns 2009a, 2006, 2005). But since real people's opportunities are also affected by the

is only *partially comprehensive* when it comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated' (emphasis added).

resources that someone holds, it is safe to assert that primary goods are a subset of the capabilities required for someone to enjoy real freedom (Obregón 2014, Pereira 2013, Robeyns 2009b). The emphasis on ‘real life’ is obviously critical to distinguish one approach from the other but at the same time it naturally sets the underlying connection between the two. Whereas primary goods emerge from a thoroughly developed ideal theory, the capability approach tells us about the need to go beyond those primary goods when situated in real life. One could say that the capability approach is a nonideal extension of the ideal primary goods. In fact, this is recognised by Sen himself (IJ, p. 66, 234; see also Sen 1990, 1980).

Yet, although Sen’s metric of capabilities is undeniably valuable as a metric of justice, there are still certain aspects that need further clarification to fully understand the conceptual framework on which Sen’s approach relies. Particularly, there are at least two issues related to the use of capabilities which are relevant for this dissertation. First, recognising that the capability space can be a better proxy to capture people’s real opportunity to *do* or *be* regardless of what they have reason to value does not tell us anything about which capabilities are to be promoted through political action. Ultimately, what this acknowledges is that the concept of capabilities captures well the opportunity aspect of freedom but not necessarily the process aspect of freedom (IJ, pp. 295–296). The latter (the process aspect) includes both the processes under which valuable opportunities themselves are generated and the processes under which the capabilities/opportunities considered relevant to be expanded are to be chosen, which in turn are critical for ranking alternative social arrangements. A second issue is that, although one may agree that Sen’s concept of capability itself avoids perfectionism, there is also the further question of whether the identification of a priority list of capabilities (either full or partial) can avoid the charge of perfectionism. Sen’s IJ tries to provide an answer to both of these concerns by underlining the last two features of his methodological framework: people’s characterisation as agents and the role of reasoning.

4.2.3 Reasoning: The perspective of the moral person

As seen in chapter III, Sen’s starting point is to recognise that in public life there are not only plural comprehensive views about how to live a good life but also plural conceptions of what justice entails. Subsequently, he rejects the possibility

of reaching a final say on what perfect justice entails. Yet he is positive about the possibility of achieving partial agreements between plural views of justice via the use of reason. Thus, for Sen's methodological approach, reasoning between individuals is one of the most important features of his *Idea of Justice*. The large number of pages Sen's IJ dedicates to the central issue of reasoning makes it clear that it and its exercise via public discussion are central not only to his work but also to the pursuit of justice in general (Deneulin 2010, 2011a).

Hence, Sen, like Rawls, strongly relies on the use of reason as a non-negligible precondition for the discovery of what justice requires. Sen's approach strongly relies on *public* reasoning for the purpose of advancing justice. In his proposal, public reasoning via active and inclusive participation is the mechanism that serves two relevant purposes: (1) the collective identification of valuable capabilities as well as the different weights they can take within specific contexts and (2) a collective decision about the justness of different states of affairs ranked in terms of the previously identified capabilities enjoyed by individuals. As such, this method of plural reasoning accounts for the process aspect of freedom and attempts to evade the charge of perfectionism. In this way, reasoning and freedom are the two central ideas through which Sen's IJ 'links development with justice' (Deneulin 2011a, p. 788).

A close reading of Sen's work, however, reveals that there is a very special understanding of what the demands of reason entail and the purpose it serves. The form of reasoning that Sen advocates could be called something like *the moral perspective of reasoning*⁶². It is different from the narrow conceptualisation of selfish reason of the economic discipline and is also a departure from the Rawlsian characterisation needed from a social contract perspective. In essence, Sen's moral perspective of reasoning can be reconstructed as containing at least three interconnected basic features: (1) it goes beyond the limited view of reason of the so-called *Homo economicus*, (2) it has to be objective (i.e. impartial) and have universal reach, and (3) it is conducive to morally desirable behaviour.

(1) *Reasoning beyond single-minded self-interest*. Reason and rationality, Sen argues, cannot be equated with the narrow view of self-interest, because 'human beings can easily have good reason also to pay some attention to objectives other

⁶² As we will see in the second part of this chapter, this will be a determinant and controversial feature of his overall approach.

than single-minded pursuit of self-interest' (IJ, p. 179). For instance, a person could decide to act in accordance with 'self-imposed constraints of 'decent behaviour'' (IJ, p. 182) rather than the single-minded pursuit of one's own self-interest, and this would still be a representation of rationality. Therefore, a conceptualisation of rationality has to be broad enough to be able to accommodate these different types of reasons that can guide human behaviour. In order to do this, Sen argues, a conception of rationality has to include a connection between what would be rational for someone to choose and what the reasons behind that choosing are⁶³. In Sen's words:

Rationality of choice, in this view, is primarily a matter of basing our choices—explicitly or by implication—on reasoning that we can reflectively *sustain* if we subject them to critical scrutiny... The essential demands of rational choice relate to subjecting one's choices—of action as well as objectives, values and priorities—to reasoned scrutiny... Having reason to do something is not just a matter of an unscrutinised conviction... Rather, it demands that we investigate the reasons underlying the choice and consider whether the alleged reasons survive searching and critical examination, which one can undertake if and when the importance of such self-scrutiny is understood... We can not only assess our decisions, given our objectives and values; we can also scrutinize the critical sustainability of these objectives and values themselves (IJ, p. 180; emphasis in original).

(2) *Objectivity of (plural) reasoning*. The need for objectivity in the use of practical reason is further emphasised when making ethical judgements and pursuing justice. But more important for Sen is the recognition of the central role that public discussion plays in this task. Following Rawls' contribution in his demand for establishing a 'public framework of thought' to recognise the objectivity of political demands (IJ, p. 42) but going beyond it, Sen advocates for a more direct kind of objectivity. Instead of relying on hypothetical scenarios, Sen relies on an objectivity situated in the real world: 'thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject' (IJ, p. 197; see also

⁶³ For a detailed discussion about the need to go beyond the narrow characterisation of rationality as a self-interest pursuit, see IJ, chapter 8 'Rationality and Other People' (pp. 174–193). See also Sen (1999a, pp. 270–273; 1977), and see Richardson (2012) for a discussion on Sen's concept of commitment in the context of IJ.

Gilardone 2013). Thus, it is an objectivity that is already immersed in the mere reasons presented to support one's positions in public discussion. Sen considers that Smith's 'impartial spectator' is best suited as a foundation for the kind of reasoning and reasonable behaviour needed to advance justice in the real world.

The device of the 'impartial spectator' asks us to use our reason to scrutinise whether what one thinks is just for oneself would also be just in the eyes of others and their communities. As such, Sen relies on an idea of individual reason that is able to transcend pure selfish individual rationality and is capable of considering other's perspectives and interests in one's own choices and points of view. In accordance with Sen's view of comprehensive outcomes, individual's claims, choices, and reasoned evaluation of states of affairs have to 'take an adequately broad view of the realizations that would result, including the nature of the agencies involved, the process used and the relationships of people' (IJ, p. 219).

(3) *Reason leads to just behaviour.* Implicitly and sometimes explicitly, Sen takes the power of reason into a more direct path, leading not only towards discovering the just but also to the necessary moral behaviour required. Hence, aside from being useful for critical reflection, reason can also shape our own behaviour in a way consistent with the normative requirements of just behaviour towards others. In Sen's words in IJ:

Lack of smartness can certainly be one source of moral failing in good behaviour... A person can have well-thought-out reasons other than the promotion of personal gain for acting in a socially decent way... Being smarter may help the understanding not only of one's self interest, but also how the lives of others can be strongly affected by one's actions (p. 32)... and help us to think more clearly about our social concerns and responsibilities (p. 33)... Reasoning can be concerned with the right way of viewing and treating other people, other cultures, other claims, and with examining different grounds for respect and tolerance (p. 46).

It is this specific three-fold understanding of reasoning that Sen relies on for the advancement of justice. Hence, as in his other works, he recognises that reasoning has to go hand in hand with the exercise of people's freedom via unrestricted public reasoning as the basis of democracy (Sen 2012, 1999a,

1999c)⁶⁴. It is in this sense that democracy understood as ‘government by discussion’—where all voices from different quarters and different perspectives can be expressed—is to be one of the core features of Sen’s conceptual framework to advance justice (e.g. see Drèze and Sen 2013).

4.2.4 Agency: The individual as an ethically responsible agent

Underlying the previous discussion is a particular view of the human being. Sen’s emphasis on freedom—particularly the process aspect of freedom—reveals the view of individuals as active agents (rather than passive recipients)⁶⁵. Agency has always been the counterpart of the notion of capability (i.e. wellbeing freedom) within Sen’s capability approach where both are seen as constituents of development (Sen 1985). ‘Greater freedom’—Sen writes—‘enhances the ability of people to help themselves and also to influence the world, and these matters are central to the process of development’ (Sen 1999a, p. 18). Sen has defined an agent as ‘someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives’ (1999a, p. 19) and agency as the person’s freedom ‘to do and achieve...whatever goals or values he or she regards as important’ (Sen 1985, p. 203).

As such, individual agency is central to advance justice. Indeed, agency is an integral feature in Sen’s conception of individual freedom in both the opportunity aspect (which involves the choice of individuals in achieving what they have reason to value) and in the process aspect (through the active participation to bring changes about and in the determination of valuable capabilities and in their rankings). These aspects in turn are taken into account in IJ via the focus on capabilities and public reasoning respectively. However, this agency freedom that individuals enjoy also has a corresponding duty of ethical social responsibility (see Deneulin 2014a, Crocker and Robeyns 2009, Crocker 2008). The socially responsible person responds to the demands of moral objectivity in the use of reason.

⁶⁴ See also Crocker (2006, 2006b, 2008, particularly chapters 9 and 10), who develops further Sen’s view on public reasoning from the point of view of deliberative democracy.

⁶⁵ On this topic, see also Sen (1999a, 1985), and see also Crocker (2008) and Crocker and Robeyns (2009) for a thorough summary of the concept of agency in Sen’s work.

An active citizen participates in public discussion, acts, thinks, and decides in consideration of the likely consequences of her choices not only for herself but also for others. That is, agency accounts for both self-regarding and other-regarding motivations. Crocker (2008) defines Sen's notion of agency as follows: 'Persons are agents to the extent that they are able to scrutinize critically their options, themselves decide (rather than have the decision made by someone else or some external or internal force), act to realize their purposes, and have [a positive] impact on the world' (pp. 219–220). It is in this sense that Sen insists that we are agents 'whose freedom to decide what to value and how to pursue what we value can extend far beyond our own interests and needs' (IJ, p. 252). This notion of a responsible agent is also contained in the concept of capability (IJ, p. 270) because having the '[f]reedom in general and agency freedom in particular are part of an effective power that a person has' and it is central 'in understanding our obligations' (IJ, p. 271).

In sum, one could say that Sen's conception of the individual is that of a responsible agent who is capable of understanding what is the ethical thing to do via the use of reason and who is driven to act in such a moral way.

4.3 Assessing Sen's nonideal proposal

Bringing all the pieces together gives us a clearer picture of Sen's methodological proposal to reduce manifest cases of injustice. Essentially, he proposes a comparativist method of reasoning to assess and rank social arrangements as more or less just in terms of individual capabilities through the lens of comprehensive outcomes, which in turn emerge from a process of public deliberation of impartial (objective) agents. In a nutshell, Sen's comparativist method works as follows:

- (1) It starts from a shared recognition of an 'evident' case of injustice that can be remedied;
- (2) There is a public deliberation that takes into account all relevant information about processes, outcomes, and distribution of burdens and benefits, in order to rank feasible courses of action as more or less just;

(3) This partial ranking and courses of action has to be carried out in the space of individual capabilities.

This section critically analyses how these ideas would work in practice and whether they are helpful for the purpose of enhancing justice. It argues that there are enough reasons to question the way in which Sen's methodology is presented to advance justice in this imperfect world. And it shows how these limitations can be addressed by associating Sen's methodology with an ideal theory.

4.3.1 Sen's starting point—Manifest cases of injustice

A starting query is whether what seems to be an unquestioned starting point—the 'manifest injustices that so severely plague the world' (IJ, p. 263; e.g. Boot 2012, Stemplowska and Swift 2012, Valentini 2011, Robeyns 2008)—is indeed as evident as it first sounds. This section argues that, after further examination, it may turn out that what counts as a shared notion of 'manifest injustice' may be less straightforward than is assumed. For what can be a 'patent' case of injustice in a Rawlsian perspective might not be so in a utilitarian or Marxist or libertarian perspective. But, more importantly, if we take this assumption to the reality of actual people's perspectives, there are very good (even if disappointing) reasons to be doubtful. For instance, according to Sen, arbitrary incarceration could be one of those injustices for which 'we can have a strong sense of injustice [even if] on many different grounds' (IJ, p. 2). But is it an 'evident' case of injustice?

In Mexico, reality might indicate the contrary. Although the view is not officially accepted, there is indeed a lot of support from a portion of the population, including the educated population, to repress (even violently repress) public demonstrations when they disturb their daily lives⁶⁶. In the context of one of the most emblematic incidents in Mexico (Ayotzinapa 2014), this fact became very visible. After the 'arbitrary arrest', kidnapping, forced disappearance, and—most likely—killing of rural students by the local police, one would expect that this simply cannot be considered anything else but a manifest case of extreme injustice. The reality is that it was not and still is not. For example, a report concluded that '[a]ll of the security forces in the area [state police, military base] were aware of the prolonged and coordinated attack against the students but did

⁶⁶ Only around 40% of people support public demonstrations (Penagos and Warketin 2015).

not intervene to protect the students' (Meyer and Smith 2015). But, more strikingly, what may reflect better the fact that it does not represent a shared notion of injustice is the *public* opinion of highly ranked public servants of the state. One illustration is the highly pejorative even quizzical comment of the deputy of scholarships of the National Council of Science and Technology, who wrote in a public platform: 'It is a crime of "siblings", brownish-shabby individuals killing other brownish-shabby individuals... well, it is then a brownish-shabby canicide' (Hernández and Speed 2014; my translation)⁶⁷.

To be sure, this example does not negate that a large part of the population *does* find this event aberrantly unjust. The point is that on the other extreme a significant part of the population not only finds it acceptable but even justifies it. Nor does it deny that everyone *might* agree with the following comparative scenario: 'a society in which people are arbitrarily arrested is *obviously* more unjust than one in which, all other things equal, they are not' (Valentini 2011, p. 306; emphasis in original). This may be indisputable. What is being put in doubt is whether the comparative question would even arise in Mexico at all, given that there is not a shared agreement that arbitrary detention is necessarily unjust. Actually, it is much more common than this isolated example might suggest (chapter VI).

Thus, although Sen is confident that a shared notion of what constitutes '*remediable injustices on which there is reasoned agreement...can be reached among people*' (2012, p. 323; emphasis in original), the latter example might question whether the majority of people really see it that way. Similarly, Drèze and Sen (2013) present various examples of supposedly evident cases of injustice that are in fact not evident at all for the whole Indian population. Therefore, whether other examples that Sen refers to (i.e. universal healthcare in the U.S., subjugation of women, elimination of torture, and racial discrimination) can pass the public test is inconclusive at the very least. For, as Rawls warns, 'those who act unjustly often do so with the conviction that they pursue a higher cause' or even that they are being just (TJ, p. 245). This does not rule out that there are indeed 'manifest' cases of injustice, but the painful realities of the 'real world' do make one wonder whether we are being too optimistic. Alternatively, Sen might mean not that every person should consider these atrocities unjust but rather that all ethical theories agree that these practices are unjust. If this is the case, then

⁶⁷ Original in Spanish reads: 'Pues es un crimen de hermanos, morenacos matando a otros morenacos..., caray, entonces es un perricidio morenaco'.

we *do* need transcendental theories. These ideal theories not only take these *obvious* injustices as ‘fixed [starting] points which...any conception of justice must fit’ (Rawls 1999, p. 18) but also develop an integrated framework to further confirm these ‘convictions’ (Rawls 1999, p. 18) and justify why they are indeed unjust.

In contrast, Sen’s IJ leaves unanswered very important questions since he is not clear about how to identify such manifest cases of injustice (Khoo 2011). Similarly, how the identification of these injustices is compatible with the principle of everyone having the freedom to live a life they have reason to value (where all comprehensive doctrines are considered equally reasonable) remains an open question (Pogge and Alvarez 2010). Even if there were indeed some cases deemed to be unjust by all actual people in reality, such as children’s premature death due to malnutrition⁶⁸, one question remains: how far would Sen’s framework go in the identification of injustice? It seems as if this is not important at all, for what matters to Sen is that there is a partial agreement regardless of what makes something unjust.

This discussion suggests that, despite claiming that it is ‘[a]n approach of justice that is particularly involved with the diagnoses of injustice’ (IJ, p. 389), Sen’s approach might not be so good at diagnosing injustice after all. Indeed, there are two non-trivial challenges in this specific matter. The first relates to whether Sen’s IJ is really apt to find common ground on shared injustices or whether it has to rely on transcendental ideal theories to identify injustices (even those said to be ‘shared’). If manifest cases of injustice turn out to be more elusive than they might appear, his comparative method ‘would be hard to use (IJ, p. 57)... [it] would... get stuck at the very base’ (IJ, p. 11). In any case, one could therefore argue that a Rawlsian-like theory is necessary for the task of identifying cases of injustice—especially beyond the ‘obvious’ ones (Stemplowska and Swift 2012, Robeyns 2012, Satz 2012, Valentini 2011). This might therefore reiterate the usefulness of ideal theory for its ‘urgency’ role. The second relates to the question whether IJ is indeed fit for the adequate diagnosis of injustice. This is a crucial point since how injustice is conceptualised is ultimately related to the remedies proposed. Given the centrality of this second challenge for the purpose of this dissertation, which

⁶⁸ In Mexico, it is estimated that each year 10,000 deaths of children under five are related to malnutrition. Also, the country’s infant mortality rate (14/1000) is almost twice that of similar countries such as Chile, and the rate is higher in indigenous communities (Turati 2012).

is investigating the expediency of normative ideas of justice to orient political action, this topic will be addressed again in detail in the following chapter.

4.3.2 Reason, individual's agency, and the basic structure of society

The previous chapter already pointed out some concerns with comparing states of affairs through public discussion without an ideal target. It argued that reference to ideal principles of justice was in fact necessary for ranking different social arrangements in order to promote justice. This section shall focus instead on Sen's conceptual demands about the use of reason in public deliberation while integrating reasoning and agency into a single analysis. The reason is that it is in the public space that individual's agency—mediated by reason—is discharged and becomes relevant for justice matters. Hence, the connection between reason and agency is fundamental for the whole exercise. The assumption, then, is that they are interrelated, even if imperfectly (IJ, pp. 176–178). Indeed, one can expect that reason—to a large extent—influences people's agency and thus their behaviour. If this is indeed so, Sen's total reliance on public reasoning as the ultimate source of justice-enhancements in the real world might therefore face a real difficulty.

In this regard, the crux of the matter is the relationship between the wider social structure and reason itself. According to the literature on this topic, Sen's instrumental view of institutions as mere facilitators/obstructors of individual freedom ignores the far-reaching effect of social structures on people's own reasoning and on the way they evaluate and act in the world. Hence, the literature invites us to recognise that all human behaviour, choices, and reasons are immersed within a complex 'collective framework of meanings that give [people's] actions and decisions significance' (Deneulin 2011a, p. 793; see also Taylor 1994). As such, this wider social structure delimits and becomes the reality in which all individual actions take place. It becomes 'the very support of individual reasoning' and the mediator of all human behaviour and social interactions that take place within it (Deneulin 2011a, p. 793; see also Deneulin et al. 2006, Gore 1997). The problem, however, is that these structures either can be favourable for the human conditions or can be unfavourable. If they become corrupted, people's own perceptions about reality also can be perverted to the extent that

unjust practices become normalised and thus no longer considered unjust. Within these structures, unjust individual's actions and reasoning can be perceived as being in accordance with their apprehended sense of justice (see also Stewart and Deneulin 2002). A classic empirical illustration of this situation is the Nazi regime, whose success cannot be separated from the large support from a great deal of people within such structures.

The claim is thus that injustice is more structural than what Sen is willing to recognise. Therefore, these critiques suggest that structures ought to be treated and evaluated as intrinsically important in pursuing justice and thus to discern between 'good' and 'bad' institutional framework (see also Stewart 2013). Although their ultimate objective may be at odds with the framework that this dissertation endorses, what is important to note is that these critiques contain a powerful underlying argument that goes directly to the core of Sen's approach. What they are really questioning is the mere possibility of women and men reasoning in accordance with Sen's strong demands of a responsible agent who is capable of objective reason. One should therefore question how significant this challenge is to Sen's overall comparative framework. The answer depends on whether one wants to see it as a readily practical framework (i.e. ready to be applied as it is) or as a nonideal approach that reveals transcendental features (even if of a nonideal kind) itself⁶⁹. If one argues that the first option might render Sen's framework inexpedient for advancing justice, it is the second option (transcendentalism) which emerges from the argument.

A weak response to this structural critique could be to argue that there is no such thing as a one-step institutional transformation. This is precisely one of the reasons for Sen's departure of transcendental ideal theories and his focus on public reasoning to advance human freedoms via individual agency. This response, however, would ignore the real pressing point of the critique, namely the fact that 'the extent of agency and the objectives that people value depend in part on the environment in which the individual lives' (Stewart and Deneulin 2002, p. 67). To this more pressing objection, one could respond that even if he does not evaluate it *directly*, Sen does account for the profound effect of this wider social web of institutions on people's lives. Indeed, he recognises that 'individual freedom is quintessentially a social product' (Sen 1999a, p. 31; see also, for

⁶⁹ One must recall from chapter III that Sen's use of the notion of transcendentalism can be a trait of both ideal and nonideal theory.

example, pp. xi–xii, 31, 142, 297). For example, Sen often recognises the effect of social norms on individuals, such as how they undermine women’s opportunities and their influence on women’s own distorted self-perceptions (see also Drèze and Sen 2013). In IJ, he further insists that the ‘concern with people’s ability to live the kind of lives they have reason to value brings in social influences both in terms of what they value...and what influences operate on their values’ (p. 244; see also Sen 2002). In this way, Sen can reasonably conclude that his approach ‘provides a perspective in which institutional assessment can systematically occur’ (1999a, p. 142).

Still, while acknowledging the social impacts on individuals, Sen would insist that ‘their roles can be sensibly evaluated in the light of their contributions to [individual] freedom’ (1999a, p. 142). In this respect, Sen’s position is ‘ethically individualist’ in the sense that, even if sensitive to social constraints, ‘individuals, and only individuals, are the units of moral concern’ (Robeyns 2005, p. 107)⁷⁰. This position is thus consistent with the Rawlsian notion that considerations of justice require the priority of the individual, but it nonetheless raises an important question: where does this acknowledgement of the deep social effects on people’s values, reasons, and choices leave Sen’s IJ insistence on public discussion for deciding questions of justice? Stated differently, if individuals’ reasoning and values can be distorted by power relations, social norms, wider structures, etc., how can justice be advanced through democratic processes? Is it not self-defeating? Not according to Sen.

Sen is undoubtedly willing to accept these pervasive influences on individuals, but—and this is an important but—he still argues that, through objective reason, they can always be transcended. To illustrate his view, Sen draws on his carefully well-crafted understanding of ‘transpositional objectivity’ (IJ, chapter 7). It happens, Sen argues, that sometimes an unjust social arrangement may be similarly regarded as *not* unjust by individuals who view it from a similar position, but ultimately its unjustness can come to light and even be overcome if observed from a different position (see Gilardone 2013 for a thorough analysis on this topic). Precisely, in this context, Sen writes:

⁷⁰ This emphasis on the individual alone is what critics disapprove of (e.g. see Stewart 2013, Deneulin 2006, Sagovsky 2006).

... [a] limitation applies to the range of our thinking process and to the broadening of our capacity to contemplate. Our very understanding of the external world is so moored in our experiences and thinking that the possibility of going entirely beyond them may be rather limited. All this does not, however, indicate that positionality cannot be partly or wholly overcome in ways that take us to a less confined view (IJ, p. 170).

To overcome people's sequestered reason by social influences, Sen suggests 'more public engagement on such a subject' (IJ, p. 245), particularly from the view of the 'impartial spectator'. The impartial spectator demands us to objectively reflect about 'how things would look to "any other *fair* and *impartial* spectator" ...[which] can bring in judgements that would be made by *disinterested* people from other societies as well—far as well as near' (IJ, p. 125, emphasis added). Sen is thus confident that 'bad reasoning can be confronted by better reasoning' (IJ, p. xviii, 49). And, as previously discussed, according to Sen, aside from being useful for critical reflection, reason can shape one's own behaviour in a way consistent with the normative requirements of what is just.

Sen's strong and coherent advocacy for democratic means and people's agency in overcoming injustice makes for a forceful argument (see Sen 1999a, 1999c, Drèze and Sen 2013, Crocker 2008, Alkire 2006). But essentially what this comes down to is Sen's confidence that through more inclusive public discussion—through 'impartial', 'disinterested' individuals engaged in public deliberation, to be more precise—reason can ultimately overcome parochialism. This explains the fact that he can coherently concede that evolutionist processes as well as individuals' social relations and institutions can influence someone's 'thinking, choosing, and doing' (IJ, p. 245; see Stewart and Deneulin 2002) while reason itself can be relied on to achieve comparative justice. For, in Sen's understanding, these influences do not really 'invade the space for reflective reason' of the individual (Obregón 2014, p. 126; my translation). As such, when they need to be, these social influences and corresponding behaviours can always be trumped by further reasoned scrutiny and transform individual actions.

One can wonder, nevertheless, whether this *theoretical* solution is indeed a useful way to think about advancing justice *in practice* here and now—as Sen's IJ aspires to do. Note that the whole exercise assumes the existence of ethically responsible objective agents capable of detaching themselves from their own

biases and who are ready to consider others' points of view when interacting in public deliberation. Through the impartial spectator, 'Smith constantly invokes the necessity for us to consider how our priorities would look to others' (Sen 2012; p. 325). Freeman (2012) summarises Sen's method in the following words:

[Sen's method]... relies upon... a society of sincere and conscientious deliberators with moral sensibilities, all of whom adopt the point of view of the impartial spectator. They then engage in public reasoning and comprehensive consequential evaluation, which enables them to come to agreement upon, or at least public justifications to one another of, comparative rankings of the justice of alternative states of affairs (p. 189).

What is ultimately at stake is the reliance on public discussion *in the real world* to deliver justice-enhancing social change in the absence of such demanding assumptions and in the presence of very opposite realities⁷¹. In contexts of extremely deficient democracies with high inequalities and powerful elites, the notion of objective unrestricted public reasoning for determining 'justice-enhancing' change—even if desirable—is a very demanding idea to say the least. Who would the *real public* be in the 'public' discussion from which a partial ranking of a more just society would emerge? Can we really expect individuals to be able to reason beyond the unjust structures from where the very same reasoning finds it support? In fact, under realistic conditions, one could argue that—perversely—it is through 'democracy' that *injustice*—not justice—is advanced⁷². Even in less burdened and more democratic societies, we see more radical political proposals on the rise, along with more social polarisation, racism and xenophobia.

On these grounds, the 'real world' idea of justice promoted by Sen, its total reliance on public reasoning, and its outcome presented as a legitimate advancement of justice can thus be questioned. Moreover, even without considering the presence of real-world distortions to democracy, the previous chapter already raised serious doubts about the idea that pure comparative

⁷¹ For example, by considering the proposal of health as a human right, Pogge and Alvarez (2010) argue that for a public discussion to be effectively impartial and objective (that is, responsibly taking note of the different proposal, likely consequences, etc.), the amount of complexity and abstraction of a comparative exercise would be very similar to a transcendental one.

⁷² For instance, Crocker (2008) mentions that the United Nations Development Programme's 2004 report on Latin American democracies shows that since shifting to democratic regimes 'the regions exhibit worsening poverty and inequality' and that '[i]n unjust conditions, economic and political elites often capture democratic institutions and procedures and use them to protect and even to intensify their social dominance' (p. 319). See also Drèze and Sen (2013), and for references on issues on participatory projects, see Leßmann (2011).

judgements could guarantee justice-enhancing orderings without reference to an ideal theory.

Should one then conclude that Sen's IJ and democratic means are not appropriate ways for thinking about advancing justice? Certainly not, as Sen (1999c) compellingly argues, '[a] country does not have to be deemed fit *for* democracy; rather, it has to become fit *through* democracy' (p. 3; emphasis in original). Similarly, despite the shortcomings of democracy, Crocker (2008) presents powerful ideas to say that '[the] cure...for the deficiencies of democracy is...more and better democracy' (p. 320). However, he also recognises that this response can be 'too glib' in circumstances where there is 'less good will...[and] severe inequalities' (p. 321). There is no doubt that dismissing democracy would be the wrong conclusion to make. Rather, what these difficulties reveal is that Sen's powerful defence of public reasoning is a strong normative demand in favour of broadening the public arena for inclusive public deliberation. In this respect, Sen's remarks are highly relevant and illuminating (see IJ, chapter 7), though they ultimately rely on the 'good will' of individuals (Crocker 2008) and their being 'open-minded about welcoming information and through reflecting on arguments coming from different quarters, along with undertaking interactive deliberations and debates on how the underlying issues should be seen' (IJ, p. 43). That is, it nevertheless requires ethically responsible and objective agents to prove useful for reducing injustice.

Thus, it seems that Sen advances not a prescription that is readily applicable to the 'real world' but a coherent description of what *a broadly perfect standard of public reasoning* to advance justice would look like. It is in this sense that Sen's comparative method starts to look like a transcendental (not readily applicable) nonideal theory. Otherwise, Sen's framework may not prove expedient for what it is supposed to produce as a matter of justice: capability-enhancing changes.

4.3.3 Capabilities for justice

The weaknesses of the whole exercise of public reasoning in IJ have several implications. According to Sen's position, public discussion determines not only the partial ordering of states of affairs but also which capabilities ought to be promoted. Similarly to the above discussion, this section illustrates that Sen's

complete reliance on public reason in the real world may be at odds with his commitment to justice. Therefore, it briefly considers whether the specification of a list of valuable capabilities can offer an alternative solution for the purpose of advancing justice. It then presents reasons to show that, whereas Sen's strategy fails for being unspecified, the strategy of Nussbaum (who has been the leading advocate for a list) fails to be really pluralist and respectful of people's agency. That is, despite the similarities between Sen's and Nussbaum's approaches, their divergent paths counteract each other's position in this respect⁷³.

The selection of relevant capabilities has prompted a significant area of discussion within the larger literature of the capability approach. For this reason, some scholars have proposed alternative criteria for selecting relevant capabilities (e.g. Robeyns 2003b, Alkire 2002, Anderson 1999; see Robeyns 2011, 2006 for other references) though it is generally accepted that the relevant capabilities 'would be different...in different normative exercises' (Robeyns 2011, section 3.2). This section does not engage directly with this related literature. Instead, by analysing Sen's and Nussbaum's positions, it suggests that, for considerations of justice, the demarcation of relevant capabilities would have to be justified in relation to ideal theory.

In this context, the problem with Sen leaving his approach unspecified in its content is that freedom can take absolutely any form and simply adapt to the capability language. In this respect, any advancement on utilitarian, perfectionist, libertarian, liberal egalitarian, or any other grounds that gain the support of people (in one way or another) can be accepted as just if it complies with two requisites: (1) it is the outcome of 'public reasoning' and (2) it can be expressed in terms of capabilities (and there is enough evidence that capabilities can encompass all). For instance, going back to the example of the labour reform, if we place ourselves in the context of Mexico where all indicators of social and income inequality (CONEVAL 2013, World Bank 2012), corruption, and discrimination (CONAPRED 2012) are worryingly high, where only 8.8% of workers are part of labour unions (Martinez 2013) and whose leaders are co-opted by the leading party (Obregón 2013), one could wonder about the efficacy of the kind of 'public discussion' that actually takes place in such a situation. Within such circumstances, the outcome

⁷³ See Deneulin (2014a, 2013b), Nussbaum (2011a, 2003), Deneulin and Shahani (2009), Crocker (2008, particularly chapters 4–6), and Robeyns (2011, 2006, 2005) for a general introduction to the capability approach, including similarities and differences in Sen's and Nussbaum's writings.

of 'public' reasoning could easily be presented as indicating that Mexican people value more the capability for flexible employment as opposed to the capability for decent and long-term employment. What is most problematic in this case is the recognition that Sen's approach could have not only reproduced the same utilitarian-inspired result but also legitimised it as just (Biondo 2010). Surely this result would be at odds with Sen's overall extensive writings against utilitarianism, though his approach of justice does not rule out this possibility in any way. Putting Sen's IJ to work in real life goes with the real risk of imposing the view of the powerful as the outcome of 'public reasoning'.

If one extends the discussion about the fragility of relying on public reasoning under conditions that do not meet Sen's requirements of the use of reason and responsible agency, it seems inappropriate to classify whatever comes out of such a situation as being justice-enhancing. It is in this respect that one can question Sen's decision to leave the path of justice to public discussion as long as it is expressed in one of the many forms that the notion of capabilities can take. Following this line of reasoning and exemplifying the malleability of the notion of capabilities, Nussbaum has long advocated for the need to specify a list of valuable capabilities whether under perfectionist ideals or under 'liberal' ideals. Her final goal has been, and still is, to promote a list of 'central human capabilities' as a matter of justice. Her list consists of 10 categories: Life; Bodily health; Bodily integrity; Senses, imagination and thought; Emotions; Practical reason; Affiliation; Other species; Play; and Control over one's environment (see Nussbaum 2011a, 2003, 2000, for the specification of the content of each capability).

Nussbaum asks us to recognise that not all kinds of freedoms are consistent with the advancement of justice. Some are trivial and other freedoms are simply bad (see Nussbaum 2003). Similarly, Alkire and Deneulin (2009) mention that the specification of 'valuable' capabilities via public discussion faces the risk of either omitting important capabilities or including some capabilities which are the result of distorted preferences due to unjust structures, or of endorsing those imposed by the powerful. Hence, Sen's apparent extreme underspecification may not be justified when justice is considered. But there are problems with Nussbaum's strategy of setting a list of capabilities to solve Sen's indeterminism for issues of justice. One problem is that it transgresses the process aspect of freedom of individuals, that is, their agency to determine the freedoms they have reasons to value. From this standpoint, public deliberation only serves the role of specifying,

adapting, and implementing the proposed list. Still, this transgression to individual agency does not seem to be a matter of embarrassment for Nussbaum, for, she argues, it offers an alternative to the equally problematic insensitive defence of the notion of freedom regardless of the content it takes. On this point, however, Nussbaum does not fare well. The formulation of such a list completely isolated from public deliberation and from the mere individuals who are to be affected by it seems to violate the basic understanding of treating people as agents and as ends in themselves (see Crocker 2008, chapter 6; Sen 2004, Robeyns 2003b; and Robeyns 2005, 2006 for other references).

Another problem is about how Nussbaum presents her list. Despite her efforts to place her list within the realm of political liberalism (after being previously presented as a 'thick vague theory of the good'), it is not clear that the list does not continue to be a partial comprehensive doctrine of the good (and simply spiced up with the 'choice' option 'if you want it') (see Deneulin 2002 for a similar conclusion; see also Crocker 2008, chapter 6). As a result, Nussbaum's attempt to present an alternative theory of justice within liberalism could also fail in its most basic feature, that of showing equal respect for different conceptions of the good and of respecting equally individual dignity (Robeyns 2016). In fact, even if it is initially justified on the grounds of Aristotelian 'internal essentialism' and then of being the object of an 'overlapping consensus' (see Deneulin 2013b), various scholars suggest that her list is ultimately based on her own partial reasoning, which in turn is presented as the exemplification of reflective reasoning par excellence (see Clark 2013, Kleist 2013, Hicks 2006).

This means that the difference between Sen's and Nussbaum's positions can be traced back to the role of public reasoning in each of their approaches. Whereas Nussbaum sees public reasoning as instrumentally important to mould her specific list, Sen sees the role of public discussion as central. For him, the specification of a 'totally fixed' list is problematic since it 'den[ies] the possibility of fruitful public participation on what should be included and why' (Sen 2004, pp. 77–78). Yet Nussbaum does have a point about the doubtful position of totally relying on public discussion in real contexts of injustice and thus the need to specify a list. To be sure, Sen has reasonably justified his position to leave the capability metric open to use for different 'practical purpose[s]', each of which may require different items on the list and different weighting (Sen 2004, p. 79; see also Robeyns 2005, 2003b). But when the metric is used in the context of justice

and for the specific purpose of assessing justice-enhancements, leaving the notion of capability completely open to public discussion can also be an important limitation.

Finally, against both, once a list or group of capabilities is endorsed (whether by the philosopher or by a group of people or by the whole public), it could still be accused of perfectionism (Robeyns 2009b). This is because once a list is specified, it is those capabilities, and not others, which would be recognised as the most reasonable freedoms to be promoted for a dignified life. Additionally, they would have priority as valid claims of justice over other capabilities—even if there are others which may be equally reasonable. Arguably, aside from the agency claim, not specifying any list of valuable freedoms is Sen's way to escape the charge of perfectionism. At least in this way the charge cannot be directed to him and hence his position remains truly liberal, in theory. Still, in practice, one could argue that, on this account, both Sen and Nussbaum remain problematic for matters of justice.

To summarise this section, the flexibility of the metric of capabilities may be undeniably useful for a variety of concerns (Deneulin 2014b, Robeyns 2016, 2003b), but, as the above concerns show, the flexibility of the capability metric might not be easily welcome for a practical approach to justice—at least not if a selection of capabilities is independently justified from an ideal theory since, if underspecified, it can produce and legitimise injustice. In contrast, once specified—in practice—the metrics of capabilities cannot but be teleological (i.e. having the purpose to lead towards a valuable end) (Deneulin 2002). This does not imply, however, that the metric of capabilities is inadequate for a theory of justice concerned with human freedom. Rather, what it indicates is that the selection of capabilities would have to be warranted on the basis of, and thus bounded by, an objective already identified by an ideal theory. Hence, under this understanding, promoting capabilities becomes what Pereira (2013) describes as a 'teleology heavily subordinated to a deontology' (p. 56) where the *telos* constituted by an ideal theory (independently justified) guides nonideal efforts to advance justice. Put another way, this means that the overall outcome of public reasoning expressed in terms of capabilities would have to be in line with and

promote (that is, be *transitional* towards) the aim identified by ideal theory (which in this case is illustrated by Rawlsian principles)⁷⁴.

4.4 A dual framework of justice: ideal theory and nonideal theory

In IJ, Sen presents his comparative method as a framework for ‘wrestl[ing] injustices in *the world in which we live*’ aiming at ‘advanc[ing] justice through enhancing the liberties and freedoms and well-being of people who live *today*’ (p. 81, emphasis added). On a theoretical level, the latter discussion raised serious doubts about the ability of Sen’s conceptual framework to deliver its promise, i.e. advancing justice in the real world without the necessity of a transcendental (ideal) theory of justice. On its own, Sen’s methodological approach may struggle to identify injustice beyond those extremely obvious cases. It also fails to secure justice-advancing outcomes of public reasoning in the imperfect world⁷⁵. As Rawls rightly points out, ideal theory is a prior necessity for a practical theory of justice: it provides a framework to systematically identify the core of injustices, a task for which nonideal theories are not well equipped, and it provides an objective without which a nonideal theory is nothing more than a ‘castle made out of sand’ (Pogge and Alvarez 2010, p. 574; my translation).

Consequently, this chapter’s discussion implicitly suggests that one could also recognise that Sen’s idea of justice remains entirely a normative nonideal theory which identifies the kind of reasoning, procedure, and metrics that the approach requires to be useful for the real world. Under this reading, Sen’s framework cannot avoid the transcendentalism that he himself condemns. This transcendentalism, however, is of a different kind than that of Rawls. It is a nonideal transcendentalism that determines the perfect standard about *how* justice can be advanced in the real world. For it to be useful, however, such transcendentalism still needs to be connected to an ideal theory. Hence, this dissertation argues that, to overcome Sen’s difficulties, his framework has to be coupled with an ideal theory. For example, it can be connected to Rawls’ ideal theory. The argument that Rawls’ and Sen’s approaches can be complementary

⁷⁴ Anderson (1999) proposes a similar criterion for selecting capabilities based on the conception of ‘democratic equality’.

⁷⁵ A comparative ranking may even fail to deliver a partial outcome altogether (Boot 2012, Schemmel 2011).

is supported by several authors either explicitly or implicitly (e.g. Gilabert 2012, 2008, Campos 2011, Pogge and Alvarez 2010, Osmani 2010, Robeyns 2009b).

As recognised above, Sen himself acknowledges that the focus on capabilities is only an extension of the primary goods advanced by Rawls and thus that there is no foundational departure from his theory of justice (IJ, p. 234). But even more revealing, elsewhere, Sen accepts that he does not dispute Rawls on other issues such as ‘the priority of liberty’ which requires ‘giving personal liberty some kind of a real priority (though not necessarily in the extremist lexicographic form chosen by Rawls [in nonideal circumstances—it should be added])’ (IJ, p. 299). Likewise, he asserts that liberty ‘is a central concern both in a person’s freedom...and it is also a basic necessity (e.g. in the form of freedom of speech) for the practice of public reasoning’ (IJ, p. 63) (see also Freeman 2012). Implicit in this recognition is the fact that Sen also takes from Rawls the idea that development policies and justice have to take individual freedom as a priority and not anything else. Finally, it is also evident that they share the Kantian root of relying on reason to discover the nature of what is to be considered just. Whereas Rawls believes that the original position is necessary to guide people’s reasoning, Sen takes a leap of faith and believes that (public) reflective reasoning itself can do the job.

Ultimately, with the added umbrella of Rawls’ ideal theory, it is possible to make sense of Sen’s nonideal nature and make it satisfy the three nonideal requirements identified in the first part of this chapter: feasibility, moral desirability, and transitionality. Sen’s emphasis on public discussion has the quality of respecting people’s freedom and agency in both the process and its generated outcomes in terms of capabilities. This in turn complies with the nonideal demands of *feasibility* (it does not demand unthinkable capacities beyond human and institutional possibilities) and *moral desirability* (it respects the moral demands of Rawls’ ideal theory, i.e. treating individuals as ends in themselves and individual liberty). Likewise, the idea that public reasoning has to consider the processes as well as the outcomes (i.e. comprehensive outcomes) in comparative assessments would require that both instances be judged from the moral bounds of an ideal theory⁷⁶. This assumes that there is a *telos* to which the outcome of public reasoning is in *transition* towards. This is what Pereira (2013) calls ‘the

⁷⁶ Making explicit an ideal objective helps to understand and give content to the otherwise vague notion of ‘comprehensive outcomes’.

teleological guidance for application' of ideal theory (p. 59)⁷⁷. As such, Sen's nonideal framework can be feasible, transitional, and morally desirable with respect to Rawls' ideal theory.

Without these connections to ideal theory, Sen's IJ would simply be a self-defeating approach full of contradictions (surprisingly, this is Sen's own assumed position). For example, one could not make sense of Sen's insistence on the acknowledgement of a plurality of reasons and the need for public reasoning and his unembarrassment in relying on human freedom as the ultimate goal—a goal which, in his approach, does not need further revision. Yet Sen offers no system of justification for such a strong position. This is why this chapter has argued that a more fruitful understanding of Sen's approach emerges when its nonideal status is acknowledged and is properly linked to an ideal theory (in this case, to Rawlsian theory).

So far, this dissertation has maintained that, for reducing injustice in practice, the complementarity between ideal and nonideal theory is essential. In this sense, both of these theories intend to be action-guiding. Whereas ideal theory has an *urgency* and a *target* practical usefulness (by answering what makes a society just), nonideal theory has a *remedial* and *transitional* practical usefulness (by answering how injustice can be reduced and how to move towards the target). The remaining two chapters of this dissertation critically examine whether this dual framework (ideal/nonideal) is sufficient to address injustice in the real world. Chapter 5 will analyse what the coming together of a Rawlsian ideal and a Senian nonideal theory implies for thinking about reducing injustice. It then analyses to what extent such coupling succeeds in guiding political action to effectively reduce injustice in the world. This analysis in turn will reveal the insufficiency of a dual approach in practice. By critically reflecting on the translation of normative ideas into action, this dissertation will emphasise the need for the last but not least level of theorisation, namely a 'ground' idea of injustice. It argues that this understudied level could provide some alternative possibilities to offer effective remedial action towards the objective of a more just society.

⁷⁷ The next two chapters illustrate that, in the absence of such an ideal, Sen's framework could be reduced to a remedial theory of social improvements rather than being a transitional approach to justice in the sense of constructing a more just society.

PART II.

The starting point of this dissertation was the question of whether theories of justice could provide useful practical guidance to counteract injustice in the world. The first part argued that moving towards a more just society requires both ideal and nonideal theorising of justice. Both assist in the identification and understanding of different aspects of the same trajectory towards more just societies—what I have called ‘levels’ to distinguish their different ground of theorising. Whereas ideal theory sets a *telos* of ‘what’ we ought to strive for, nonideal theory identifies necessary paths about ‘how’ best to promote that *telos*. This nonideal path is at the same time restrained and guided by the ideal. Therefore, if one takes the complexity of injustice seriously, one should not take either ideal or nonideal theory of justice on its own as an all-purpose theory of justice. For when either is taken alone, they both remain insufficient for furthering justice (even if for different reasons). Hence, the dissertation argued for seeing them as mutually dependent for the specific task of advancing justice. It showed that Rawls’ and Sen’s respective theories can be coupled for this purpose. This second part of the dissertation analyses whether this strategy is sufficient in practice. Would a dual approach of Rawlsian ideal and Senian nonideal theory suffice to remedy injustice in the real world?

In order to assess such a dual (ideal/nonideal) framework, this part of the dissertation moves away from scrutinising the conceptual aspect of theories themselves and instead shifts its focus to the kind of normative guidance that they can offer. As mentioned in the introductory chapter, this reflection is often neglected in theories of justice by simply assuming that these nuances will be ‘context-dependent’. Therefore, this exercise is usually relegated to the social scientist whose job is to specify and implement these normative ideas. However, the following chapters will show that there is still an important role for theoretical reflection about these concerns before normative ideas materialise in specific contexts. For instance, what does operationalising Sen’s IJ actually imply? Which are appropriate ways to enhance public deliberation in Mexico? What counts as justice-enhancing change? How should the expansion of capabilities be accounted for? Does the answer to these questions change depending on the purpose at hand? If what we aim for in the long run is a society that honours Rawlsian principles, how ought capability expansion be translated in practice?

These are important questions to ask and it is the job of a development ethicist to address them. The second part of this dissertation illustrates the relevance of

these questions by examining Sen's nonideal theory. In doing so, it adds an extra level of theorisation that borrows strongly from a distinct philosophical tradition, namely critical theory. This in turn suggests that contrary to how different approaches to justice understand themselves as being mutually exclusive, these perspectives complement each other. True rivalry between philosophical ideas obviously does exist and intellectual effort to clarify disputes is often required, but at times rivalry between distinct perspectives is more of appearance than substance. It might well be the case that disputes between 'opposing' perspectives are different angles of the same phenomenon and ultimately complement each other. In this sense, this dissertation advocates for greater intellectual cooperation between distinct perspectives. One does not have to entirely dismiss Rawls' principles of justice simply because in practice they fail to guide political action adequately and sometimes result in the justification of injustices which are contradictory to his *Theory of Justice*. Similarly, one does not have to choose Sen's capabilities alone knowing that his framework has the risk of legitimising injustices (for example, by acknowledging that public reasoning processes are not immune from the dominant group determining the *telos* or 'valuable capabilities' of all members of society).

The aim of part II is to show that a dual framework between ideal and nonideal theory is necessary but still insufficient to reduce injustice. Consequently, it needs to be further complemented by a 'ground' from which to depart, for which liberal theories of justice are not well equipped to account. This is what this dissertation will call the 'grounding' role of injustice. It asks for a greater understanding of the way in which the unjust status quo persists. And it takes this unjust status quo as the actual subject of revision of any approach to justice, for it is the actual unjust ground which is questioned at any level of theorising and thus in need of transformation. Hence, if there is no success in its alteration for the better, then there is little practical gain from the enlightening work of many outstanding philosophers (regardless of their immense value elsewhere).

Part II is thus an attempt of moving one step closer in that direction by insisting on the relevance of paying attention to the (unjust) contextual level of justice, its theorising, and its role in the overall project of reducing injustice. This dissertation understands the grounding level of injustice as the context from *where* the operationalisation of theories of justice departs, for just as nonideal theories need an (ideal) objective where to aim, they also need a *ground* from where to depart.

In sum, this dissertation insists that to reduce injustice effectively we need to be able to pay more attention to how the unjust context is maintained in order to diagnose injustice adequately. The persistence of the mechanisms through which injustice is reproduced demands more than ever a comprehensive understanding of injustice and its dynamics. This requires a higher commitment to take the practice of justice seriously at every level (ideal foundation, nonideal processes, and the scope of application). This is what part II is concerned about.

V. Adding the ground of injustice to ideal and nonideal theories of justice

The first part concluded that if development is concerned about justice, then Rawls' ideal theory and Sen's nonideal theory provide an answer to the *what* we should aim for, and *how* we should get there, and advocated for their coming together. This chapter argues that while a dual framework provides a stronger and more coherent approach to deal with injustice in theory, it remains transcendental. Hence, this chapter moves away from foundational concerns to focus on the practical relevance of this dual framework in terms of the kind of guidance it can command in practice. It highlights that owing to its inability to appraise injustice adequately a dual framework remains insufficient to inform useful political action to rectify it. This in turn emphasises the need to conceptualise justice as something different from simply the lack of justice and, in particular, the need to understand it in a more dynamic and relational way. This broader understanding and scope of what injustice entails will prove to be non-negligible for neutralising its transmission and thus for really advancing in the construction of a more just society.

This analysis, however, continues to take place at an abstract conceptual level. As such, it does *not* deal with the more empirically charged issues of political feasibility or actual guidelines of implementation. Although these are clearly important issues, they do require more in-depth empirical and anthropological immersion, which is beyond the scope of this dissertation. Instead, following some core ideas within critical theories, this chapter examines the conceptual deficiencies of a dual framework for accurately examining injustice, which in turn reduces the scope of political remedies to counteract it. This level of theorising remains important for engaging with the practical issue of making theories of justice useful for remedying injustice in the real world. This engagement brings out the necessity of theorising about the adequate way to materialise normative demands in real contexts of injustice. This chapter deals with the third component of the three-level approach to justice proposed in this dissertation: the grounding level or an idea of injustice. The rationale for adding this level, it will be argued, is due to its relevance in determining the kind of political action needed to remedy

injustices. Ultimately, this implies the further complementation of ideal and nonideal theories with a broader conceptualisation of injustice capable of examining the unjust status quo and its perpetuation.

5.1 The transcendental nature of a dual framework

Preceding chapters showed that both Rawls' ideal and Sen's nonideal approach were not sufficient *on their own* to counteract injustice in the real world. As a result, the previous chapter suggested that these two approaches can, in principle, be paired. But this still leaves out the critical question of whether a dual framework offers sufficient guidance for reducing injustice. In theory, this particular dual framework would be formed by the Rawlsian ideal principles (equal liberties, equal fair opportunities, and the difference principle) setting the objective of '*what*' we are aiming for (i.e. the *telos*), whereas Sen's comparative method (public reasoning, individual agency, and the metrics of capabilities) would be the—morally and feasible—strategic '*how*' to bring about those ideals gradually.

Under perfect conditions, the practice of a dual framework would be as follows. First, a case of injustice would be identified at the ideal level according to Rawlsian standards. For instance, the labour reforms in Mexico were not in accordance with a basic structure of society that honoured the principles of justice, nor did these reforms seem to be a transition in that direction. Second, once injustice has been identified, it would then be up to inclusive participation via public reasoning to assess different *feasible* courses of action in terms of the capabilities that each possible social arrangement promotes (Sen's comparative framework). However, once these approaches are combined, the set of possible capabilities would be constrained by the ideal. In this case, the different courses of action as well as the 'valuable' capabilities that emerge from public discussion would have to be weighed in relation to how well they serve the ideal of justice. That is, public reasoning would have to consider the moral desirability of its outcome as well as the processes to bring about those results (i.e. comprehensive outcomes bounded by an ideal).

This connexion between ideal and nonideal theories already provides an improved framework to advance justice in comparison to each approach considered on its own, for the two approaches complement each other's

shortcomings while maintaining their own strengths. It acknowledges that Rawlsian ideal theory does not necessarily provide adequate guidance in the imperfect world and thus is complemented by Sen's nonideal method to rank courses of action. And it constrains the possibility frontier of capabilities within public reasoning in the sense that only those that are transitional to the ideal can be reasonably defended. It is thus aware of path dependence (see Pogge and Alvarez 2010). One could say that the synergy between these theorisations of justice already provides a better-suited *theoretical* framework to deal with real cases of injustice such as the Mexican labour reforms. What is still not clear, nonetheless, is whether these improvements would actually translate into a less unjust world in *practice*.

Evidently, we simply cannot know what the actual Mexican labour reforms would look like had it followed a Rawls/Sen dual framework. Would the outcome of such deliberation be different from the actual legal reform? Even granting the possibility that the emergent labour reform would be similar to the one enacted in Mexico, there are still good reasons to defend a dual framework because (1) the actual labour reforms would be the result of treating people as agents rather than as means, (2) they would have the aim of constructing a more just society (not only a wealthier one), and (3) since all would be part of the deliberation, it is not unreasonable to expect that the resulting policy would be less biased against workers' rights and their labour security. Yet, although this sounds sensibly reasonable in theory, it remains far from being a useful practical approach to reduce injustices in the real world.

The reasons are as follows. As was discussed previously, the kind of public reasoning that the approach requires is absent in most if not all societies, therefore making it vulnerable. Likewise, people's actual—as opposed to desirable—behaviour may not be in line with Sen's demands. Although Sen criticises Rawls' ideal assumption of full compliance with the demands of justice, ironically the same critique also applies to Sen's own framework. He also assumes that reason alone will prompt individuals to engage in public deliberation with others as equals and then to honour with their behaviour what was agreed as a result of it. In the real world, it is precisely the issues of noncompliance which lie at the heart of a fractured democracy. This assumption goes against everyday observable dynamics of personal and institutional interactions in Mexico's democratic practice.

These reasons, however, do not make Sen's nonideal theory useless for assisting justice-enhancing political action. Neither do they discredit the value of public discussion widely promoted by liberal and non-liberal scholars alike. On the contrary, this goes well in line with scholars who suggest that justice should be about ensuring that all citizens can participate in public dialogue in the first place (Pereira 2013, Fraser 2000, 1997, Anderson 1999). Hence, what this discussion attempts to illustrate is that, even when coupled with an ideal theory, Sen's framework remains transcendental, not in the sense of defining what justice is (like ideal theory) but in stipulating what ought to be in place to advance justice. In doing so, it provides a sound ethical justification for redirecting justice-advancing actions towards the goal of enhancing people's capabilities as well as their agency to participate in public deliberation.

Yet, coherent as this conclusion may be, there is still the question about how these demands can be advanced in contexts of injustice⁷⁸. There is no real practical guidance about how these normative ideals can be translated in *specific unjust social realities*. This implies that although Sen's approach calls for a more practical conception of justice, it itself falls short of doing just that. There is still a gap between a dual framework and the practice of reducing injustice in the real world. This means that in order to assess the practical usefulness of a dual framework, further analysis about how its conceptual framework translates into action in a specific contextual reality is required.

5.2 A dual framework in practice and the context of application

To reflect about the kind of practical guidance that such a framework can provide, we can represent Rawls'/Sen's dual framework in terms of the following guiding structure:

- **(Rawls) Ideal Just Society:** We should construct a society where the basic structure of society allows everyone to enjoy equal rights and liberties, equal fair opportunities and where inequalities are accepted only

⁷⁸ Some authors even suggest that nonideal theories seem to reject an ideal of justice only to replace it with another utopian end (i.e. democracy) (see Erman and Moller 2013). In this respect, one could argue that although nonideal theory mediates the distance between the ideal (Rawlsian) end and the social world, this advancement takes us only half way. If the issue with ideal theory is that it does not tell us how to achieve that ideal, then including Sen's nonideal approach only pushes the question further. It is not clear either how these nonideal demands can be accomplished.

to the extent that they are for the benefit of the worst off so that everyone can pursue their life plan freely.

- **(Sen) Nonideal Justice:** We should pursue justice by promoting human freedoms and respecting people's agency so that everyone can participate in inclusive public reasoning.

Under these structuring conditions, it is Sen's nonideal justice that (primarily) provides guidance about how to reduce injustice in the here and now—even if bounded by ideal justice. Its results ought to be judged from the perspective of comprehensive outcomes (where outcomes and processes are viewed from the perspective of how well they serve ideal theory). Nevertheless, this does not mean that one cannot obtain any practical guidance from Rawls' ideal justice (e.g. Boot 2012, Valentini 2011), though this is not its main role. Nonetheless, any political action inspired by it would also be restrained by the condition of nonideal justice (i.e. the process needs to respect people's agency and the outcome has to go in the direction of ideal theory). As such, these conditions constitute a synergetic dual model between Rawls' ideal and Sen's nonideal theory. However, given the difficulties of successfully translating ideal theory into practice (chapter III), one could say that it is Sen's nonideal justice that normatively orients social and political efforts to reduce injustice. Although deriving a fully sketched principle to inform action is beyond this dissertation, one could say in very broad terms that this dual framework aims at guiding political action under the following encompassing nonideal guiding principle:

(P1) Political action should enhance all relevant capabilities (including an enabling institutional context) that enable people to be active agents in public deliberation, as well as any other relevant capabilities that people have reason to value as long as they promote the goal of ideal theory, while respecting individual's agency throughout, to the largest possible extent⁷⁹.

This guiding principle is in line with the overall objective of the dual framework and highlights the two main aspects of Sen's nonideal theory (capabilities and

⁷⁹ Considering the ideal of 'democratic equality', Anderson (1999) proposes a broad rule to demarcate the necessary capabilities to participate as equals in society. In her view, the relevant capabilities are those that 'enable [people] to avoid or escape entanglement in oppressive social relationships' and those that are 'necessary for functioning as an equal citizen in a democratic state' (p. 316). Arguably, one could say that these rules for selecting capabilities overlap with the guiding principle [P1] identified above. This chapter, however, goes further by critically reflecting on the practical implication of promoting capabilities in practice.

agency for public discussion). Similarly, in line with Sen's writings, it emphasises that violating people's agency in the name of greater justice is to be avoided. Precisely, this is what makes it morally desirable (as it treats individual as ends in themselves). It also means that, in the process of enhancing capabilities, individuals should be engaged as active agents rather than passive beneficiaries (Sen 1999a). But the phrase 'to the largest possible extent' indicates that in certain circumstances one state of affairs may be more just than another even if it comes about as a result of a less inclusive process (see Gilabert 2008). This can be in line with the notion of 'comprehensive outcomes'.

Once we know what kind of guidance a dual model (i.e. Sen's nonideal theory bounded by the ideal)⁸⁰ can provide, the question which remains is whether promoting such capabilities can prove to be useful to counteract injustice in real-life unjust contexts. This would depend on how the guidance it provides translates into more grounded injustice-reducing actions. That is, all previous theoretical work along with the guiding principle derived from it is a step forward, but it is not enough to assess its expediency in practical terms. The point of this chapter is to emphasise that one still needs to think about, for example, what it would mean in practical terms to promote a capability to 'function as an equal citizen in a democratic state' (to use Anderson's phrase) or what a good strategy for political action in order to successfully achieve these goals would be. This chapter attempts to develop these points from the perspective of a Rawls/Sen dual model.

In-depth thinking about these concerns is rather limited among theories of justice. In general, there is almost no theoretical reflection (even if in very broad terms) about how these normative ideas can/ought to be translated into practice to remain true to their intention. Sen himself, for example, explicitly avoids providing any guide for action to reduce injustice. To the questions of 'How can individuals' capabilities be enhanced?' and 'How can people's agency be enhanced?', Sen advises that this would vary along with the specific circumstances. Consistent with his commitment to respect people's freedom (opportunity and process aspect), his framework is open for each contextual reality to decide what kind of political actions are best suited for each situation (Deneulin 2014a). The actual form that social or political actions take to enhance capabilities would have to account for

⁸⁰ From this point forward, when referring to the guidance that a dual framework offers, the chapter uses 'a dual framework' or 'Sen's nonideal theory' interchangeably to mean the connection between ideal and nonideal theory identified above. This delimits the range of capabilities and thus it is assumed that the capabilities promoted are indeed 'valuable' capabilities for the end of ideal justice.

different values, local interpretations, people's agency, the specific issue at hand, and so on. That is, the translation of his normative demands into a specific social reality has to be context-dependent. Hence, there seems to be a vacuum that separates these abstract philosophical ideas from the context where they are meant to be relevant. The separation between these two, nevertheless, might be stopping too early and it might be indicative of missing too much.

Although the reasons for not stipulating specific rules for action are obvious and there is no intention to dispute its basic tenet, there still might be good reasons to further revise the relation between normative ideas and the social context. For once we accept that normative demands still need to be translated within specific social circumstances, we also have to accept that those social circumstances become highly relevant in the pursuit of justice. Thus, we must also be wary that in (rightly) seeking to be sensitive to contextual realities, we do not end up going too far in the opposite direction, namely conceding too much to the particular dynamics of the context. This might be especially true in countries such as Mexico where the distance between the contextual reality and the transcendental demands of justice is abysmal. In these situations, by simply relegating the context to a secondary level of importance, normative ideas of justice might face a bigger challenge to prove useful to rectify injustice.

One problem with stating that the practical matters of justice ought to be context-dependent is that it gives the mistaken impression that there is nothing beyond that claim worthy of *academic* theorisation. It assumes that a sound theoretical justification of a conceptual framework of justice will—by extension—provide equally sound guidance in practice. It implicitly treats the social context as a mere recipient of justice. But if development is about making the world more just—in the sense that this dissertation has discussed it should—then this position may not be fully justifiable. It overlooks that there can be a huge mismatch between the intentions to advance justice and the kind of political action that is actually implemented in its name. It is in this sense that we still need to critically reflect about the kind of guidance that Sen's nonideal theory is likely to inspire in practice. Only then may we come to realise that the analytical detachment between its normative framework and the context of application may turn out to be problematic. To build this argument, this chapter draws on some core ideas of the critical theory tradition that directly sheds light on the practical issues of reducing injustice (Bohman 2013).

5.3 Rearticulating the critique of critical theories

The beginning of this chapter argued that the practical value of a dual framework should be judged not by its direct application in the real world but by the kind of guidance it can command to rectify injustices. This section examines a strengthened version of Sen's framework (i.e. as part of the dual framework) in this endeavour. Following the critical perspective, it will argue that by failing to adequately grasp the unjust social context *where* it is meant to inform political action, the guidance it offers remains restricted in its scope and thus vulnerable to particularities of the unjust context itself. Specifically, it shows that Sen's conceptual framework risks putting outside of its direct normative scope some aspects which may be crucial to remedy injustice, namely the social dynamics of the unjust status quo. This in turn will have important implications for a dual framework. The analysis will suggest that it requires an additional component to be practically useful. In doing so, this chapter reinterprets critical theory in such a way that it can further complement a dual framework for rectifying injustice in practice.

5.3.1 Insights from critical theory

Critical theories are usually discussed in relation to Rawlsian-like ideal theories. Moreover, far from being a simple critique, critical theories usually conceive of themselves as ontological positions that are fundamentally opposed to ideal theories. This may seem to jeopardise the intention of uniting critical theory with a dual framework that already contains Rawlsian ideal theory. This dissertation does not engage directly in this debate. Rather, to the extent that their critiques can be related to the shortcomings of ideal theories *in practice* and thus are similar to the discussion on ideal/nonideal theories (chapter III), this dissertation assumes that one does not need to take this strong ontological opposition⁸¹. Moreover, only some core ideas of critical theories, as opposed to a whole theory, will be borrowed to advance the argument of this chapter. This in turn might offer a distinct possibility to deal with what are often viewed as two irreconcilable

⁸¹ In addition, to the extent that critical theories can be related to the sociological critique presented in chapter II, this dissertation already argued that these critiques to Rawls' theory were misplaced.

positions. Thus, ideas presented here are deliberately selected for the purposes of this chapter and as such are not intended to capture the wide diversity and richness of different critical theories at length.

Critical theories argue that a conception of justice can emerge only from the realities and experiences of injustice embedded in specific social settings (Pereira 2013, Young 1990; see also Schwartzman 2006, Fraser 2012). From this perspective, ideal theories of justice are seen as inherently flawed for countering injustice in the world in two different ways: (a) in the kind of abstraction which they rely on and (b) in the distributive remedies proposed. On the first issue, they argue that by idealising away certain characteristics in their theorising (i.e. race, gender, ethnicity, and so on), they automatically render invisible these types of injustices along with the specific ways in which they are experienced by the members of such groups in real life. Consequently, ideal theories legitimise and contribute to the perpetuation of injustice for some—so-called—minorities⁸². This is because these theories completely disregard already-existent social dynamics of discrimination and oppression within actual institutions and practices (e.g. Mills 2005, Young 1990).

The second concern poses a strong challenge to the ‘redistributive’ means through which Rawlsian-like theories could respond to injustices⁸³. The problem, critical theorists argue, is the way in which these approaches understand someone’s advantage or disadvantage purely in terms of the amount of holdings—of whatever is deemed valuable from the point of justice—that an individual possesses in relation to another. Subsequently, the solution to rectify an injustice from the point of view of these redistributive theories is by transferring a certain amount of the specific currency of justice (such as Rawlsian primary goods) to those affected. Critical theorists condemn this form of remedy because it ends up reducing the scope of justice only to tangible things that can be divisible between people. And at the same time, it tends to reify wrongdoings that happen through social relations (including cultural, symbolic and communicative processes) as well as the institutional context in which injustices are experienced (Young 1990, pp. 27–30). As a result, these theories of justice can contribute to

⁸² For instance, they highlight injustices to ethnic, racial, gender and religious groups, among others. See Meer et al. (2012), Eskelinen (2011), Thompson (2006), Anaya (2004), Fraser (1998a, 1997), Taylor (1994).

⁸³ This point follows Young’s *Justice and the Politics of Difference* (1990). This point is related to the metrics of justice employed and, as such, will be relevant when analysing Sen’s nonideal guidance later in the chapter.

maintaining or even worsening the way in which individuals experience injustice⁸⁴ (see also Fraser 1997, 1995; Koggel 2013).

The main idea, then, is that focusing on the distribution of 'goods' is simply not enough for neutralising the kind of injustices suffered by many individuals, especially those members of historically disadvantaged 'minorities' such as the ones mentioned before. This is well captured by Fraser's (1998) example about a black man on Wall Street who could not get a taxi on his way home from work for no one would stop to pick him up, presumably because of the colour of his skin. In this case, his disadvantage could be neither explained nor rectified by a focus on liberties (in the formal institutional sense), opportunities to access a position (as he was clearly working on Wall Street, although from the example one could not know whether he faced other obstacles in getting the job in the first place), or income. Rather, she suggests, the injustice to which he is subjected is of a different kind. It is the result of a cultural or symbolic order that devalues certain particularities of the individual in question (in this case, skin colour). Thus, accounting and redressing transgressions to these aspects of life—what is usually called 'recognition'—should be no less relevant than redistribution to respond to injustice effectively (see Fraser 1998a, 1998b, 1997; Honneth 2001, Taylor 1994, Young 1990)⁸⁵.

Underlying these two critiques are some common features that can be drawn for the purposes of this dissertation. In broad terms, critical theory could be understood as a group of theorists who share three main points. First, they see their approach to justice as being entrenched in a specific understanding of the social world—primarily about the *nature* of injustice in the real world—which in turn informs their specific conceptualisations of justice. Notwithstanding their different approaches, they all consider the understanding of people's experiences of injustice in reality as essential to develop useful guidance to overcome it⁸⁶.

⁸⁴ Some scholars, however, consider that liberal theories of justice can take into account at least some of these demands in a satisfactory way without having to renounce their distributive criteria (e.g. Kymlicka 1995).

⁸⁵ There are, of course, important differences between critical theorists and their understanding of these injustices. Not all of these scholars would be equally represented by this depiction. For instance, instead of using the term of 'recognition', some present their critiques under the notion of difference of identity. (See Bird 2004 for a critical discussion of the difficulties of relying on the concept of identity.) However, they are all presented here as a group for the sake of analysis.

⁸⁶ Distinct theories understand this feature differently which in turn shapes their own theory. For example, some conceptualise these vulnerabilities as a disparagement in status (Fraser 2000) or distortions of identity (Honneth 2001, Taylor 1994) or forms of oppression (Young 1990). For a summary and more specific detail of these critical theorists and their approaches, see Thompson

Second, they consider that injustice happens in intersubjective relationships and hence that the relevant space for action must include relational features. Finally, they consider that liberal notions of justice are not helpful to understand these vulnerabilities correctly and as such that their remedies are limited.

Although there are several important critical theories that advance these points, this dissertation does not attempt to defend or endorse a particular theory. Instead, the intention is to capture what can be viewed as a shared ground of all of them in order to set the stage for analysing the practical limitations of the guidance provided by a dual framework. For this purpose, the main insight taken from critical theories is the overarching social and relational nature of injustice as being the main determinant for developing appropriate social and political reforms. It is on the basis of this core aspect that the next section examines the dual framework and its expediency on its stage of application.

5.3.2 Assessing Sen's nonideal theory from a relational lens

Considering previous chapters, one could wonder to what extent these critiques apply to either Rawls' theory or Sen's framework as they have extended their focus of justice to a point that only with great difficulty do they relate to these criticisms (e.g. see Pereira 2013, Laegaard 2005, Robeyns 2003a). In response to these objections, this dissertation has argued that Rawls' ideal theory already provides an adequate basis to condemn as unjust the mere fact that gender, race, ethnic, or other differences amongst people are key determinant for people's unequal liberties, unequal opportunities, and unequal standards of life. It provides a moral call for striving for the equality of status of individuals regardless of their different identities such that those differences become morally costless for people's lives. Similarly, some scholars argue that Rawls' whole corpus already takes into account at least some of the issues of recognition that critical theories emphasise (e.g. Laegaard 2005, see also Pereira 2013). But, although one may concede these points about Rawls, they miss the mark nevertheless. For the issue at hand is not whether his theory can encompass these issues but whether it can offer adequate guidance to remedy such injustices. As discussed previously (chapter III), it is on that practical matter where Rawls fails. So the real question

(2006). For a thorough review and comparison of Fraser's and Honneth's respective positions, see Pereira (2013), Toppinen (2006), and Thompson (2005).

is whether a dual framework where Sen's nonideal theory is the one orienting political action through the guiding principle (P1) is well suited to do that.

The first thing to point out is that, in orienting practical action, Sen's normative body (P1) can be reduced to a focus on people's capabilities. It is true that Sen's strong emphasis on public reasoning can usefully direct our attention to the quality of the political structure to ensure that it is as inclusive as possible (Deneulin 2014a). However, given that his position on public reasoning remains extremely vague, entirely normative, and disconnected from the social context where it is supposed to inform action, it still leaves us far from the right place from where to reduce injustice. It does not tell us anything about what would make a public discussion acceptable or what kind of actions would improve it⁸⁷. According to critical theories, to be in a position of providing valuable guidance would require information about the ways in which some people experience political exclusion, why they are excluded, in which ways they can be excluded, and by whom they are excluded. This involves taking into account a relational view of the way in which income inequality, power dynamics of society, and different intersubjective mechanisms curtail the liberties and opportunities of some individuals to participate in public life⁸⁸. As Hutchings (2010) puts it, to inform adequate policies requires us to answer 'what is unjust to whom and how' (cited by Martineau and Squires 2012, p. 530) and this is something on which Sen's framework does not offer much detail.

To this last objection, Sen might reply that these nuances are context-dependent and that what matters is that the reasoning process in these situations are evaluated from the point of view of individuals' real opportunities to participate and the kind of life that people are able to lead. For example, arguably, Drèze and Sen (2013) come very close to meeting the demands raised by critical theorists. In *An Uncertain Glory*, they analyse 'Democracy, Inequality, and Public Reasoning' (chapter 9) in detail for the context of India. They identify the pros and the cons of the democratic institutional context, those who are consistently excluded from representation, and the potential reasons for this exclusion in which the media, interest groups, and inequality play a major role. Although the analysis is certainly

⁸⁷ As mentioned in chapter IV, other scholars have attempted to fill this gap by advocating a model of what is called 'deliberative democracy'.

⁸⁸ See Fraser (1997, chapter 3) for examples about the kind of difficulties that a notion of public reasoning faces. See also Martineau and Squires (2012) for other references. See Koggel (2013) for a similar critique to Sen's position from the perspective of global justice.

insightful, it is much less meticulous in the solutions it proposes, which are limited to more public discussion, protests, and especially more political representation of the deprived. And in order to achieve this, 'individuals must be individually capable of participating in public deliberation' (Kelly 2012, cited by Sen 2012, p. 334). That is, even when assessing the failures and the accomplishments of the institutional web in which public reasoning is embedded, this assessment ought to be in relation to individual capabilities. One could argue, then, that the primary guiding action of Sen's nonideal theory is that of expanding people's freedoms (including the agency freedom to participate). Therefore, the relevant concern is whether focusing on enhancing capabilities is likely to promote effective political action to reduce injustice in the broader sense that critical theories demand.

In this regard, the metrics of capability seems promising at first. The notion of capability is exclusively developed to account for the myriad types of vulnerabilities that individuals face in the pursuit of their life plan. By paying attention to what people are really able to *do* and *be*, it recognises the urgency to connect normative demands of justice to people's contextual realities; it acknowledges 'the interconnectedness and complexity of kinds of injustices and the need for a detailed, contextual account to capture them' (Koggel 2013, p. 149). Similarly, by emphasising interpersonal variations to convert resources into actual freedoms, the capability space is able to accommodate the intersubjective phenomena of recognition stressed by critical scholars (Pereira 2013, Robeyns 2003a). This is achieved by recognising that social and relational circumstances can be some of the factors affecting the real freedom that individuals enjoy. As a matter of illustration, one could say that, other things being equal, the capability set that one member of a particular ethnicity enjoys is greater (and thus more just) if she lives within a social arrangement where the symbolic order does not devalue her particular ethnicity, and thus does not suffer from these social transgressions. In this way, the notion of capabilities can capture institutional deficiencies in cultural and symbolic issues against specific characteristics, such as race, gender, and so on, that inhibit a person's ability to be and do what they have reason to value (Robeyns 2003a). The capability approach, then, can broaden the scope of the metrics of justice to understand someone's disadvantage as it provides a more complex 'language' to assess unjust situations (see Deneulin 2014a, 2014b).

For example, let us take the social context of Mexico, in which not only do indigenous people have fewer opportunities for education, health, good quality jobs, and participation in public, but also their physical appearance and the way they dress and talk are constant targets for shame and humiliation (e.g. see PNUD 2010, Méndez 2016). A capability-based evaluation is able to capture both of these infringements of justice, including the cultural injustice that critical theories underline. In fact, for these reasons, even some critical scholars find in the capability approach a better metric for their own concerns (Pereira 2013, Anderson 1999). Yet one could still argue that, although this might prove that the notion of capabilities can be a powerful metric of justice for *capturing* the different ways in which people's freedom may be thwarted, this does not prove its usefulness to inform the kind of political action which is likely to counteract them.

One must not assume that just because the concept of capability can easily be stretched to account for a variety of capability inputs (e.g. resources, institutional web) and other relevant factors (e.g. environmental, social, personal) (Sen 1999a, Robeyns 2005), it is automatically qualified to influence policy in the right direction to successfully overcome injustice on its own. Here, the focus would be on the actual practice that can emerge from Sen's nonideal theory and on analysing its normative scope for action. In this respect, Alkire (2008) distinguishes between what can be called the 'evaluative' role of a capability framework and the 'prospective' role—what this chapter referred to as guiding action or guiding principle. This section focuses on the latter, i.e. on the role associated with 'policies, activities, and recommendations...likely to generate' the desired outcomes (Alkire 2008, p. 30). This practical emphasis, nonetheless, has to be distinguished from the previous part related to the theoretical justification of the dual framework⁸⁹.

This means that, as in the debate about ideal/nonideal theory, it will also be important to make a distinction between:

(A) the theoretical soundness of the dual framework (i.e. being morally and desirably justifiable) and

⁸⁹ Alkire (2008) seems to reduce the prospective aspect only to studies involving empirical analysis. In strict terms, this responds to the fact that the appropriateness of solutions would vary according to the context. However, there is no reason to believe that no refinements can be made to the notion of advancing capabilities through theoretical reflection, which is what the chapter does.

(B) the kind of guidance it commands to rectify injustice in practice.

Although these two aspects may be serially related (i.e. if aspect 'A' is rejected, then 'B' does not take place), they are independent from each other. This means that failing in aspect 'B' does not imply that a theory also fails in aspect 'A'. This chapter is thus concerned only with aspect 'B' (i.e. the guiding action). It assumes that Rawls'/Sen's dual framework already covers aspect 'A'. Therefore, what remains to be demonstrated is whether it can deliver guidance to make a society less unjust. The following analysis will show that it is in this precise respect that the usefulness of the notion of capability may not be as straightforward as it first appears.

5.3.3 The capability misinterpretation of injustice

Sen affirms that his framework aims at guiding political action, in which case the 'evaluative becomes prescriptive' (Ballet et al. 2014, p. 16). Therefore, the information that is included as part of the notion of capabilities and the precise way in which this information is understood become highly relevant for the kind of action that it can command to redress people's disadvantage. It is in this guidance-oriented analysis of the capability metric, or prospective analysis (as opposed to the evaluative-oriented), that there are at least two caveats. These are closely related to the way in which injustice is constructed as capability-deprivation, which in turn confines the scope of actions taken to rectify it.

This analysis follows the two above points raised by critical theories, namely (1) the importance of social dynamics within actual social contexts and (2) the importance of intersubjective mistreatments. The analysis presented here will be a valuable exercise to start demarcating (even if at a general level) between desirable and non-desirable ways to operationalise capabilities in practice. Or at least, it can minimally be seen as a reminder of what 'advancing capabilities' should not be reduced to.

The status quo of injustice

The first issue is related to the inability to direct attention to 'social structures and institutional contexts under evaluation' (Young 1990, p. 20). This critique worries that, by being overly focused on individuals' freedom, the analysis would tend to

disregard the social processes of the unjust status quo in which individuals function and its perpetuation. Indeed, for Sen, these are treated only as instrumentally relevant for people's freedom and thus are kept somewhere in the background but no real judgement is directed at these processes. In Sen's (IJ) words:

Ultimately, it is individual evaluation on which we would have to draw, while recognizing the profound interdependence of the valuation of individuals who interact with each other...In valuing a person's ability to take part in the life of society [or any capability for that matter], there is an *implicit* valuation of the life of the society itself, and that is an important enough aspect of the capability perspective (p. 246, emphasis added).

In admitting that there is only an implicit valuation of social life, there seems to be also an implicit acknowledgement that the metric of capability can go only that far in passing judgement on structural phenomena. As a result, current behaviours and actions that contribute to the persistence of such structures could risk being overlooked by a capability-informed policy. This concern is well known within the capability approach and was briefly introduced in the previous chapter when referring to Sen's ethical individualism (e.g. see Stewart 2013, Leßmann 2011, Alkire 2008, Deneulin and McGregor 2010, Deneulin 2008, 2006, De Herdt and Deneulin 2007, Robeyns 2005, Hill 2003). In this respect, some capability scholars also demand wider recognition of the social nature of structures. They urge us to recognise that, although the existence of such structures depends on individuals' behaviours, they cannot be accurately understood as individuals' property alone. For instance, they identify that a purely individual focus does not appraise correctly the structural nature of social power and democratisation, the background of norms and values underlying the meaning of individual actions, the preference formation of individuals, and so on (e.g. Stewart 2013, Deneulin 2008, 2006, Hill 2003, Gore 1997). They argue that these social structures are indispensable to understand and promote individual functionings.

To illustrate, paraphrasing the example from Deneulin et al. (2006, pp. 6–7), one can conceive of a society such as Mexico where corruption is rampant and institutionalised at all levels. Imagine one person who detests corruption and values an honest life. However, one day she loses her job. Her mother, who is willing to help, lends her some money to start a small business so she can provide

better opportunities to her own children. Soon, she realises that in order to get the initial permit to start her business, besides the regular quota, she has to pay a bribe to a bureaucrat—who also has to pay his immediate boss—if she does not want to wait more than a year or two to get the permit. She knows that not seizing that opportunity would hurt the opportunities of her children, so even if she does not want to contribute to a culture of corruption, she feels that she has no other choice. As Deneulin et al. (2006) put it, '[s]uch a person is forced into wrongdoing [s]he has not chosen and of which [s]he disapproves—but that has been imposed on [her] by an unjust structure. [She] can neither change the situation [herself] nor escape it' (p. 6). The point of this story is to suggest that one must direct attention to the social processes themselves to fully understand the person's situation.

This example explains why the capability scholars who support this view advocate for including social structures as an intrinsic aspect of the *evaluation* of state of affairs along with individual capabilities. By insisting on including this aspect as a unit of moral concern, however, their position includes a more demanding aspect since it involves differentiating between *good* and *bad* structures which they see linked to *good* and *bad* individual choices. For instance, in the example above, they would mainly focus on the *wrongdoing* that the person is forced to do. In this section, in contrast, it suffices to acknowledge these injustice-generating processes⁹⁰ and the unfitness of the *action-guiding* principle that a capability metric may inspire to address them successfully. For this purpose, one can endorse the content of the critique raised by capability scholars but not their conclusions. It is not necessary and it may not be fully compatible with a notion of development and justice that has individual freedom at its core (see Alkire 2008). As will be shown, one can recognise the importance of redirecting political action towards certain social mechanisms and, at the same time, place the individual as the relevant unit of moral concern (Robeyns 2005).

From this stance, what the critique really captures is that a capability perspective would (inadequately) conceptualise this kind of situation only in terms of 'end-state patterns' (Young 1990, p. 18). That is, it would focus only on what individuals are able (or not) to *do* and *be*, while not properly accounting for the processes that generate the resulting situation in the first place. To illustrate, let us go back

⁹⁰ In the example, one could also note that aside from the wrongdoing, by acting corruptly, arguably, the person was *also* contributing to sustain an unjust system that disadvantages the poor who have less opportunity to participate in the economy since they are less likely to have the money to set up a business *and* pay the bribes.

to the example of indigenous people in Mexico who, as mentioned, perform worse in several functioning domains and who are discriminated against. The real problem is that, from a capability perspective, the assessment of their situation would be conceptualised only in terms of the capability-deprivations that individuals have. However, this obscures the individual actions, attitudes, behaviours, symbols, and so on that continuously construct being indigenous in a devalued way as well as those that continuously affect their opportunities to live well. Therefore, a capability perspective may fail to direct political attention to the *ex ante* processes and mechanisms that lie behind the kind of lives that indigenous people in Mexico can live today. As Alkire (2008) acknowledges:

[The evaluative aspect of capability] refer[s], ultimately to information on how people's capabilities expanded or contracted. Because of this focus, information on causal chains only enter insofar as they affect endstates... the primary evaluative focus is *whether* capabilities have expanded [or decreased], rather than *how and why* such expansion [or decreasing] occurred (Alkire 2008, p. 32).

As a result of this limitation, the scope of a pure capability-informed action guidance may be considerably reduced. This worry is well captured by Deneulin (2011c), who states that by 'separating the evaluation from the analysis of the political economy and power relations which are responsible for the states of affairs may risk reinforcing the status quo and perpetuating injustice' (pp. 3–4) (see also Hickey 2014, Koggel 2013, Fraser 1997, 1995). Moreover, it risks portraying the (unjust) status quo *as if* it were a neutral (i.e. not unjust) ground (see also Young 2011)⁹¹. Hence, to reduce injustice adequately, political action would have also to pay attention to the institutional rules, to how people's 'doings and havings are structured by institutionalized relations that constitute their positions, and how the combined effect of their doings has recursive effects on their lives' (Young 1990, p. 25)⁹².

Injustice as relational

⁹¹ Pogge and Alvarez (2010) make a similar argument from a global perspective. However, their argument is presented more as a theoretical criticism of Sen's comparative framework, in comparison with the more practical focus of this section.

⁹² This is what Fraser (1995) refers to as the 'underlying generative framework' (p. 82; see also Fraser 1997).

A second difficulty relates to the way in which relational injustices of recognition are prone to be interpreted and to the limited political response that a capability metric can command. Although this issue has received much less attention, it can be seen as interrelated to the previous one. It is also associated with the individualist understanding of the capability perspective but in a different way. Here, the idea is that even if it does acknowledge that individuals are social animals embedded in social realities, a capability metric would still judge a state of affairs solely in relation to the freedom that individuals *have* or *lack* (see Deneulin 2008, Gore 1997). As such, the focus of the metric is only on the freedoms of individuals while constructing any other relational phenomena as an *object* that either facilitates or obstructs such individual freedom. Therefore, strictly speaking, its conception of individual freedom remains essentially 'asocial' in the sense that a person may be a 'player' in society but 's/he is not involved in any [social] interaction' (Ballet et al. 2014, p. 21).

To illustrate and expose the implications of the latter, let us take again the example of the intersubjective mistreatment that indigenous people in Mexico experience. The previous chapter mentioned that it is not uncommon that people—including highly ranked public servants—mock the way indigenous people speak, look and dress (e.g. see El Economista 2015, Tourliere 2015). Consider now an even more telling and more direct example of mistreatment that indigenous people are subjected to every day. This is the case of a famous indigenous poet who was about to travel to present at a public event. Because she was dressed in a typical indigenous gown, she was arbitrarily detained, harassed and humiliated in an airport by a member of the federal police (Juarez 2015). What is at stake in this case is not whether a capability perspective can capture these social phenomena (it can); rather, the problem is about the kind of guidance it can provide to remedy it. This crucially depends on how this relational phenomenon is conceptualised within the space of capabilities, as only instrumentally relevant to individual freedom or simply as a conversion factor that an individual has.

Importantly, the argument is not against the idea of conversion factors as such but about how to deal with them in order to advance justice. To illustrate how the idea of conversion factors work in practice, consider Sen's example of a person with physical deficiencies (a personal conversion factor) which inhibit her ability to convert food intake into the functioning of being well nourished. This would

(rightly) point to the fact that the person might require more food (or more resources) in order to achieve adequate nutritional levels. This type of example is similarly applied to personal differences and other conversion factors such as environmental factors, age, and so on (see Sen 1999a, chapters 4 and 5). These examples show that the idea of conversion factors can be a very valuable concept to adequately deal with such problems. But, although this may be a sensible response to these types of conversion factors, one must be wary of treating those conversion factors associated with social factors in the same way—even if Sen sometimes seems to imply that they can be treated in the same way.

By treating them as conversion factors, Sen's framework would fail to understand relational injustices properly (e.g. a racist comment, a misogynist attitude, humiliation to indigenous people). Instead of conceptualising these as a relational interaction between two persons exercising their agency, Sen's capability framework can reduce the agency of the perpetrator (person B) to an object that either facilitates or thwarts the capability of person A. Thus, although a capability perspective can identify the injustice, it misinterprets it. Rather than being appraised as the result of the exercise of someone's agency, it is at best taken as a conversion factor, as it could be the weather or someone's age or someone's disability. Consequently, the scope of remedies may be reduced to compensatory action to restore the downgraded capability while leaving the source of the injustice (i.e. other's agency) intact⁹³. This is implicitly suggested in the literature:

Established patterns of behaviour in a community may also substantially vary the need for income to achieve the same elementary functionings (IJ, p. 255).

For the assessment of individual capability sets...one would carefully scrutinize the social, environmental and personal conversion factors... If one of those conversion factors can be argued to lower the conversion of income (or other primary goods) into valuable capabilities, then this could possibly provide a claim for either extra resources, or other social policies or public goods' (Robeyns 2009b, p. 409).

Although Robeyns, in contrast to Sen, leaves room for various solutions aside from 'extra resources', it is not clear at all that the capability metric on its own

⁹³ This point will be further illustrated in chapter VI in the context of poverty-reduction strategies in Mexico.

could prompt guidance other than enhancing a person's own individual capabilities or her own agency—probably through improving her opportunities of education, health, resources, or something else. Certainly, there are very good reasons to promote such actions, yet if that is the *only* course of action taken, it would still obscure the intersubjective nature of the injustice. That is, a capability-informed guidance may end up reifying non-material factors by conceiving them as immutable instead of conceptualising them as a 'function of social relations' (Young 1990, p. 16). In this narrow view, the metrics of capabilities would be only an improved version of the type of 'goods' that need to be redistributed to rectify injustice.

After analysing these two points of concern (the social nature of the unjust status quo and the relational nature of injustice), one has reason to be sceptical of the kind of guidance that a capability metric can command on its own. Even if it can successfully *identify* the forms that injustice can take, it *misdiagnoses* it. It constructs all social phenomena as an object that affects people's conversion of resources into wellbeing, while potentially excluding them from direct intervention. In doing so, it minimises the significance of distinct cultural phenomena, people's values and identities, power dynamics, structural injustice, among other phenomena, and brings them to a lesser role than the one they might actually play. That is, the particularities of the social context are seen as being somehow external to, and separated from, matters of normative justice and injustice. As a result, it leaves out the possibility to analyse further whether some of these contextual features are essential—at least partly—to better understand the injustices that are called for remedy. Paradoxically, in attempting to respect the social context, it goes too far in the direction where the unjust context and the mechanisms that reproduce it can remain unchallenged. In this way, the context becomes nothing more than the filter through which normative ideas ought to be passed; it becomes a recipient of justice rather than a ground of injustice that needs to be dealt with.

This position is almost explicit in Sen; while his approach departs from a notion of injustice, he also considers it irrelevant to scrutinise the origin of such injustice (see also Hickey 2014). By being inherently symptom-oriented, he disregards the mechanisms that produce and maintain the illness of injustice. Consequently, the treatments that this approach could originate would be limited to the symptoms of injustice but not to its underlying causes. This means that in trying to be context-

sensitive, a capability metric can also be quite disdainful and not considerate enough of social reality. Essentially, this means that the urgent task of developing a systematic framework for guiding effective socio-political action to counteract injustice remains unfinished. Dealing with these worries cannot be but fundamental to a political project concerned with constructing a more just society. This is precisely the main motivation of the next section, namely to critically reflect about the way in which the normative ideas of a dual framework ought (or at least ought not) to be translated in practice in order to fulfil its promise of orienting justice-enhancing change. This will imply broadening traditional conceptualisations of injustice.

5.4 A relational ground of dynamic injustice

The previous section showed that, by analytically detaching its normative demands from the unjust context where it is meant to be relevant, Sen's nonideal framework restricts its scope for socio-political action. Although this limitation does not discredit the theoretical soundness of a dual framework or the practical guidance that one can obtain from it, it does reveal its incompleteness and its insufficiency to transform the context of injustice. It stressed that focusing on advancing individual capabilities remains too narrow to be promising for the prospect of building a more just world—in the sense of Rawls' ideal theory. Sen's nonideal guiding principle for informing action (1) fails to adequately appraise the kinds of injustices that individuals experience from other people's *doings* as a result of, or in the form of, cultural, symbolic, or communicative phenomena and (2) forecloses the possibility to examine, and thus criticise, the dynamics of how injustice occurs in interaction and how it is transmitted. Any remedial action that fails to take these into account would remain insufficient and thus, in the worst-case scenario, may end up reproducing injustice.

This is precisely where the real contribution of critical theory lies for the purposes of this dissertation, in convincingly showing that actual people's behaviour and interpersonal interactions are a constitutive element of the existence of injustice. 'For many aspects of social structure and institutional context cannot be brought into view without examining social processes and the unintended cumulative consequences of individual actions' (Young 1990, p. 30; see also Young 2006, 2011; Fraser 1997, 1995). In this way, by recognising that actual social practice

plays a significant role in the reproduction of injustice, a critical perspective exposes that the problem with a dual framework is not solely an issue of misguidance. It is foremost about the more fundamental problem of misinterpreting injustice which is, arguably, the underlying reason behind its shortcoming in implementation. It exposes that, for Sen's nonideal theory, in practice, injustice comes to mean nothing more than the lack of justice, i.e. capability-deprivation⁹⁴. As such, it disregards the overarching social nature of injustice.

The tragedy of this interpretation of injustice is that it can give us the wrong idea that injustice is something static, an unfortunate situation in which one simply finds herself⁹⁵. Either a person is in a situation that needs more public engagement or more 'informed and enlightened agency [of the individual]' (Drèze and Sen 2013, chapter 8) or some individuals have a capability-deprivation that needs to be enhanced. But, as argued before, injustice is not a condition that simply emerges from an unexpectedly external factor making someone's situation unjust. Injustice is not natural, it is human-made. And even if injustice becomes institutionalised, injustice always depends on human actions to be maintained. It can be the outcome of the cumulative of indirect actions of individuals 'minding their own business' (Young 2011, p. 63; see also Deneulin 2011c). Or it can be the result of social practices or intersubjective interactions (or both) that continuously degrade, disrespect, ignore or stereotype others and maintain and reproduce oppressive structures that invariably favour some and disfavour others (e.g. see Young 1990, Taylor 1994, Honneth 2001, Fraser 1997). Similarly, Deneulin et al. (2006) show how 'personal wrongdoing' reproduces unjust structures which in turn 'constrain individual's actions' to act unjustly (p. 6; see also Deneulin 2011a, 2011b).

The relevant point is that, from a critical perspective, neither (formal) institutional reforms nor capability expansions or the two together would be able to surpass social differences in terms of liberties and opportunities unless the social processes, individual actions, and intersubjective relations that generate such

⁹⁴In TJ, however, Rawls does identify the origin of injustice in the basic structure of society. But, given its ideal nature, he does not deal with the social processes adequately (Young 2006) and thus it is not free from tensions (McKeown 2014, chapter 4). In a more practice-oriented view, nevertheless, because there cannot be a one-step transformation, the urgency is to reflect about ways in which positive changes can be brought about, as this chapter does.

⁹⁵ This is meant to capture the fact that Sen's primary focus is on end-states without sufficiently accounting for the generative social processes. Thus, it does not suggest that it falls within Anderson's (1999) critique of what she calls 'luck egalitarianism'.

differences are altered. In this sense, by failing to adequately appraise the social context where it is meant to inform action, Sen's normative recommendations remain highly vulnerable to the particularities of the unjust context. Its political guidance remains superficial (Fraser 1998a, 1997, 1995; Hickey 2014) and thus not effective to reduce injustice⁹⁶. With these arguments, critical theories expose the deficiencies of the guiding strategy that a dual framework can advance. In contrast to ideal theory but complementarily at the same time, critical theories urge us to realise that, in order to transform unjust realities, one must generate (rather than assume) the conditions of equal dignity/status from where ideal theory departs. To do that, they insist, we need to look at how people relate to each other and the way in which these interactions impede these conditions of equality.

It is in this way that critical theories expose that injustice is not simply the lack of justice. And by enlarging our conception of what the unjust context entails, they reveal that a dual framework must be further supplemented to render it fitter for practical purposes. That is, what a dual framework is lacking is a clear notion of the unjust situation *where* it is meant to inform political action. This conception will obviously vary depending on the particular context, but for the purpose of this dissertation, it suffices to adopt a broad general understanding of injustice that is able to take into account those social processes that generate it. To this end, in analogy with ideal theory that departs from the question 'What is a just society?' in order to identify what *makes* a society just, this dissertation takes the question 'What is an *unjust* society?' as an appropriate starting point to examine what *makes* a society unjust. The broad answer that this dissertation proposes to this question is:

What makes a society unjust is people's actual behaviour, the cumulative of actions and interactions, which reinforce a social structure that maintains and reproduces different doings and beings that do not lead to a just society.

This is what can be called the 'grounding idea of relational injustice'. It provides a 'ground' of injustice from where the scope of injustice-reduction political action must depart. It emphasises that social relations and the real agency that

⁹⁶ For example, Fraser (1997, p. 23) differentiates between 'affirmative' and 'transformative' remedies to distinguish those that leave the processes and dynamics that generate injustice unchallenged from those that call for the transformation of that 'underlying generative framework'. Whereas the former involves increasing the amount of inputs disposed by individuals, the latter involves altering unjust structures that produce people's disadvantages in the first place.

individuals exercise cannot be detached from the kind of society that ultimately emerges, i.e. from what people can, or cannot, *do* and *be*. It conceives injustice in a dynamic way, i.e. as a human-made process in constant reproduction that results from people's actions and interactions. That is, it recognises that the unjust context and its perpetuation are—to some extent—dependent on what people actually *do* and *are*, whether in the form of direct interaction (e.g. mistreating indigenous people) or simply the cumulative of individual actions that ultimately restrain people's capabilities. (For a rich example of this kind, see Young 2011; see also Deneulin 2014a, 2013a, 2011a, 2011c.) In short, this 'grounding idea of relational injustice' highlights that besides individual capability-deprivation, injustice is also about the relational context that perpetuates it as well as the interactions in which such deprivations are experienced. For it is by looking at intersubjective interactions that one can determine whether an unjust structure is being further reinforced or destabilised.

The practical implication of this relational level of injustice is to underscore that socio-political action needs to identify two distinct aspects of injustice: (1) lack of capabilities and (2) the dynamic aspect that maintains and reproduces the status quo. Hence, it requires distinguishing between actions needed to advance justice through expanding individuals' capabilities (in the narrow sense) and actions that aim at destabilising the mechanisms and relations that work to perpetuate injustice. That is, to transform unjust social realities, political action has to enhance individuals' capabilities and at the same time that it has to undermine injustice-generating interactions. Together, these two aspects can be seen as providing a refined (prospective) capability guiding principle to construct a more just society.

The following figures illustrate this argument by means of graphical representation. They distinguish between:

- (a) a narrow conception of injustice understood as individual capability-deprivation (i.e. lack of justice) informed by the narrow (evaluative) capability aspect and
- (b) a broad conception of injustice (i.e. capability-deprivation + dynamic relational injustice) informed by the refined (prospective) capability guiding principle.

Figure 5.1 presents a graph that already contains the *two aspects* of injustice (capability-deprivation and dynamic relational injustice) in order to explain their distinct effects within an unjust context. The horizontal axis represents the narrow (evaluative) metric of individual capability. The vertical axis represents the inverted effect of the dynamic relational aspect of injustice. That is, the top of the axis represents a point where an individual is not harmed by current social actions and interactions. Conversely, the bottom of the vertical axis represents the worst-off situation for an individual, meaning someone who bears all the burdens of dynamic relational injustice. In this graph, for example, a slave (e.g. basically with no individual capabilities, no institutions to protect her, mistreated in her interactions and where people's behaviour reinforce such social structure) would be positioned very near the origin of the graph where the two axes intersect. As will be shown later on, different individuals can be positioned in different points in the graph. For illustrative purposes, the graph starts with two polarising positions. Imagine that point 'A' represents a typical individual who is disadvantaged in terms of capabilities and also by social and intersubjective practices. Point B, in contrast, represents a situation that allows a person to live the life they have reason to value.

Figure 5.1. Two aspects of injustice

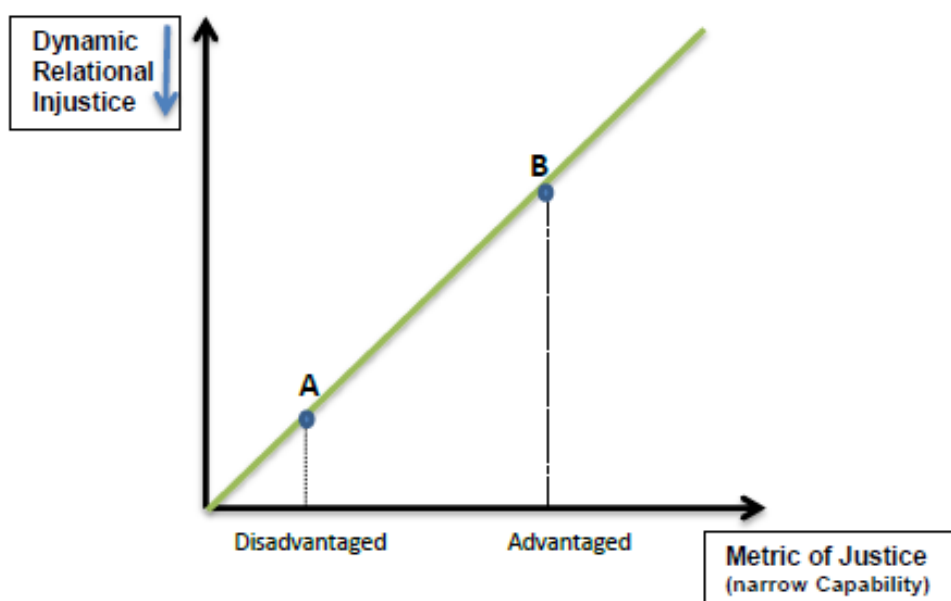
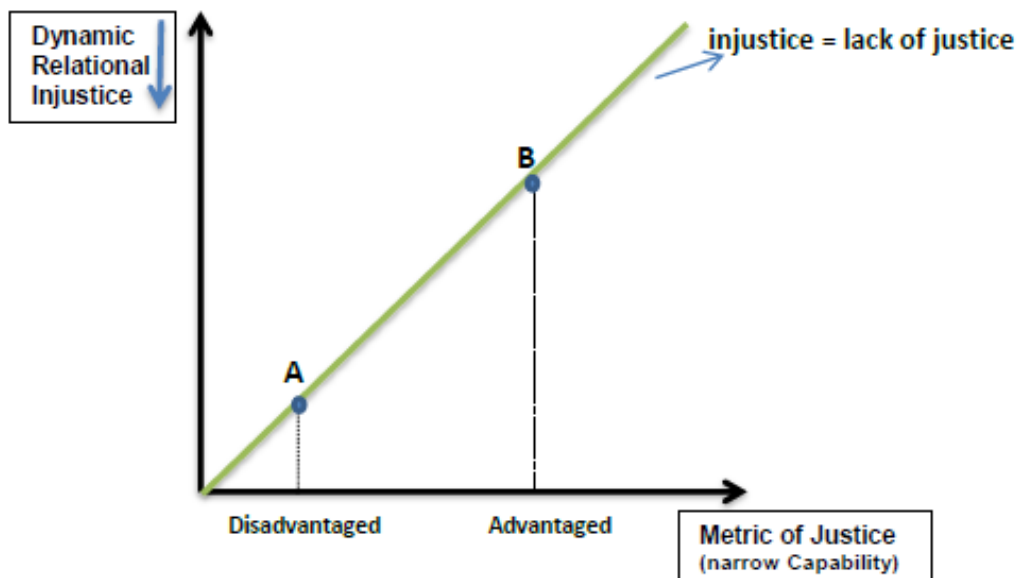


Figure 5.2 embodies case (a) (i.e. narrow conception of injustice). The 45° line in green represents an understanding of the world where injustice is equated simply with a lack of justice. Following the discussion above, this would be the case of a dual framework which is guided *in practice* by the narrow notion of individual capability on its own. In this case, the guiding action to promote justice for the person situated in point A who is currently disadvantaged both in terms of capabilities and in relational terms would be focalised towards promoting only her own individual capabilities, e.g. through access to more resources, education, health, participation, and so on. In this simple model, the underlying assumption is that by increasing the individual's capabilities she will eventually be armoured against dynamic relational injustice and hence she would ultimately move upwards along the green line from point A towards point B. The problem is that for this to be the case, one would have to misconstrue all social phenomena as an object (and thus as not dynamic) that either obstructs or facilitates individuals' freedom. That is, in this view, all 'dynamic' relational injustice becomes completely dependent on people's possession of individual capabilities.

Figure 5.2. Injustice as lack of justice



For instance, this simplistic perspective would assume that a previously uneducated individual—e.g. an indigenous person in Mexico—who is now educated would be less likely to be discriminated against when applying for a job and therefore would keep climbing up along the green line or that, once opportunities are created for indigenous people to be included in public discussion, their point of view would be taken into account without prejudice. Similarly, it would implicitly suggest that providing access to education and health for poor indigenous women would make a difference in the community's beliefs of women's inferiority, including men's beliefs that they can dispose of a women's body as they please. One could object that this is an extremely simplistic way to put it. There are at least two things that can be objected to. First, one could say that, even if in a limited way, people are nonetheless better off as a result of these individual improvements. Second, it can be said that a capability perspective (even the narrow evaluative version) would still be able to capture those other kinds of unfreedoms that each of those individuals continues to suffer. This is because one could acknowledge that the persons in the previous examples still do not have the real opportunity to do and be what they have reason to value.

Starting with the second objection, it is true, as previously acknowledged, that the ability to capture people's distinct vulnerabilities is the approach's greatest strength. Yet the problem would be that in all of the previous examples, individuals will never enjoy real substantive freedom unless the relevant other(s) grant(s) it to them in interaction (Pereira 2013). At this point, and returning to the argument previously made, the weakness of the narrow view of the capability metric is that it is unclear the extent to which it can orient political action beyond that of increasing individuals' capabilities—while leaving the actions of others unchanged. As for the first objection, it is a valid one which would be hard to deny. All of these examples continue to be a demonstration of the valuable social improvements that a capability metric promotes and that cannot be neglected. The point that critical theories would raise is that focusing only on improving individuals' capabilities may present a distorted reality that can shift attention away from the social mechanisms that generate (*ex ante*) those patterns of unjust distribution. It also forecloses the possibility that the kind of dynamic injustice that person A (in Figure 5.2) suffers might evolve and find new forms of discrimination

against her to the point that it nullifies her previous improvements (this will be illustrated in Figure 5.3 below)⁹⁷.

Moreover, in order to validate any of these situations as an actual advancement in justice—in the Rawlsian ideal sense—the person would actually have to move upwards and to the right towards point B. According to the issues raised earlier by critical theories, this may not be necessarily the case if social practices are not brought into question. In this respect, Figure 5.3 provides a better way to illustrate the difficulties that arise once the relational processes are taken seriously into account, thus embracing the broad grounding level of injustice (i.e. point (b) above).

Figure 5.3. Broad relational injustice

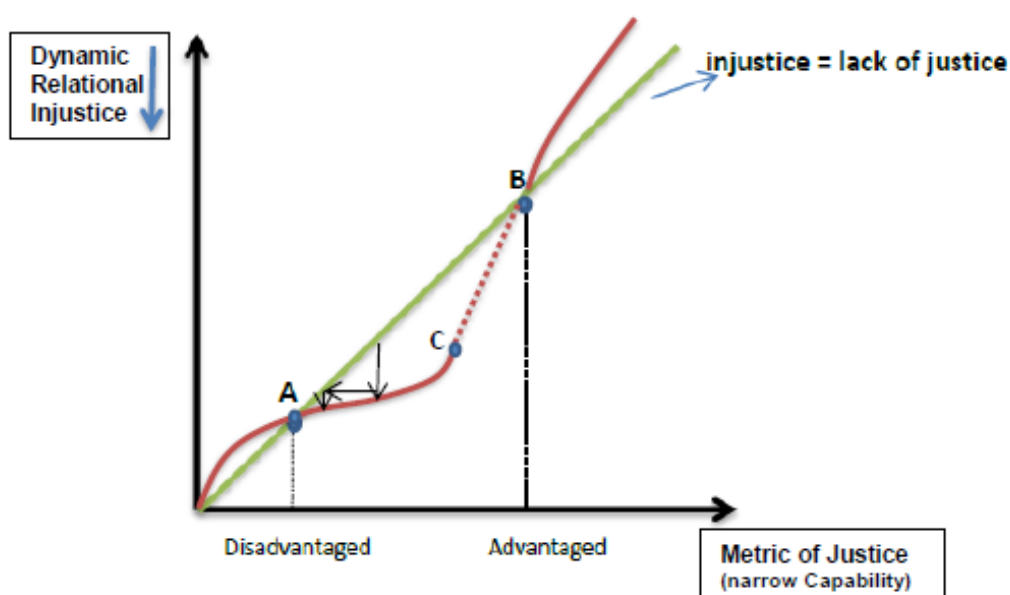


Figure 5.3 adds an extra line (i.e. the red curve). It aims at capturing the fact that once the dynamic relational aspect is acknowledged, political action focusing on expanding individual capabilities alone would tend to produce a social trajectory

⁹⁷ In fact, there are various situations that would not be adequately appraised under the narrow view of focusing on increasing individual capabilities alone. For instance, it would not allow us to see that person A, a victim of dynamic relational injustice, can also be a perpetrator of such a social structure at the same time. An example could be the woman in the example of corruption (presented above).

similar to that red line. What the red curve shows is that a minimum level of justice (e.g. institutions, liberties, resources) does indeed protect those individuals at the very bottom of the social scale from the most extreme social practices such as slavery, genocide or apartheid. But this improvement goes up only to a certain point A, in which these individuals are clearly better off than in the bottom (i.e. the origin of the graph) but also clearly worse off than those high up in the social scale (point B). This brings the situation to the one of Figure 5.2, where point A represents a disadvantaged person and point B represents a desirable point for individuals where they are free to live the life they have reason to value.

The added value of this red curve is that it captures the profound impact of the social mechanisms that generate and perpetuate the unjust status quo on individuals' lives. This red curve implies that beyond point A, the net effect of increasing individual capabilities will tend to be significantly minimised by existent social and relational interactions to which she is subjected. As a result, this change in individual holdings does not reflect a substantial change in her social position within this fractured society (e.g. the example of the educated indigenous person presented above). In the worst-case scenario, as the little black arrows try to show, it might even be the case that the effect of dynamic injustice can be as profound as to completely neutralise the positive effect of increasing someone's capabilities. This can happen because of the augmented negative image constructed around those individuals who benefit from social programmes and yet do not succeed in improving their life chances (see Fraser 1997). This could be the case, for example, of a recently educated individual who does not succeed in finding a decent job because of the current social mechanism of discrimination against her appearance. This situation can lead to even more frustration which may make the individual think that her capability is useless. Without obtaining any tangible returns from her education, other disadvantaged persons may not fully appreciate the benefits of being educated and hence may discourage their children from education. At the same time, current social processes that stigmatise them as stupid and lazy may continue to reinforce their disadvantages or lack of capabilities.

As suggested above, this analysis may indicate that advancing individual capabilities might not be ample enough to reduce concrete situations of injustice. Indeed, one could draw on several situations in the world today that may be well represented by this, albeit simplified, kind of analysis of the social dynamics

captured in Figure 5.3. By way of illustration, one could point to the black community in the U.S. whose individual capabilities have expanded significantly in recent decades and yet the social and relational practices continue to put them at a disadvantage to their white counterparts. Consider, for example, the case of Harvard professor Henry Louis Gates, who was arrested 'on suspicion he was breaking into a house that turn[ed] out to be his own home' (Pilkington 2009). This phenomenon of black people getting arbitrarily detained and sometimes even killed by the U.S. police has become a recurrent headline in U.S. news. This and other social realities might be better explained by taking the approach of Figure 5.3.

This does not mean, however, that all the cases would be equally represented by point A and point B in the graph. There are different individuals whose disadvantage would be better represented by a different point along the red line (or on the whole graph as a matter of fact). Though expanding on these other possibilities in the graph is beyond the scope of this dissertation, it might be worth mentioning one of the important points that the graph highlights. This is the case of the dotted space on the red line which tries to capture the fact that even when the promotion of individual capabilities may be successful, this narrow view of advancing justice may only get to a limited point (C) and this is because individuals who might be advantaged in terms of personal capabilities (education, health, job, etc.) can still be harmed by dominant social practices and patterns of interactions; for example, one could think of ethnic minorities, women, or members of the LGBT community (e.g. see Young 1990, Fraser 1997). In these specific cases, the obstacles that these individuals face to move from point C to point B might lie beyond increasing even further individual capabilities. Instead, it might require intersubjective means to overcome them. To illustrate, let us recall the case of the successful indigenous poet who was detained and humiliated in an airport by the police. Regardless of her level of individual capabilities, that woman may not enjoy equal liberties and equal fair opportunities to *do* and *be* unless dominant social practices exercised by others change. Only then would she be able to live free from harassment, for example.

Although this graphical representation remains exploratory, Figure 5.3 captures and helps illustrate the main argument developed in this chapter, namely that a dual framework may not be sufficient on its own to successfully reduce injustice in practice. Rather, it shows that despite Rawls' and Sen's insights, there is still

much more to be done in view of a more just society. The analysis presented here aims at advancing one more step in that direction. The graph depicts that in order to produce meaningful justice-enhancing change (by gradually moving along the green line), political action must also consider, in addition to individual capabilities, the dynamic and relational aspects that act in such a way to perpetuate the unjust status quo. Contra Sen, this implies that enhancing individual freedom should not be the only means by which development and a more just society are attained. Indeed, if people's substantive freedom within a just world is the goal being pursued, then enhancing individual capabilities falls short of that goal if they are dragged away by everyday social dynamics. Consequently, precisely because the person's freedom is the ultimate moral concern, reducing injustice demands that the capability expansion of disadvantaged individuals be accompanied by the transformation of *those* social actions and interactions that sustain and reproduce people's lack of real opportunities.

5.5 A comprehensive framework to advance justice: ideal, nonideal, and the ground level of injustice

This chapter has argued that when we move from theoretical foundations to the practical aim of counteracting injustice in the real world, a dual framework ought to be further supplemented by a notion of injustice. The main *raison d'être* of this ground level of injustice is that the success of political action is fundamentally dependent on an adequate diagnosis of injustice. Thus, in its absence, theories of justice do not have a sufficiently well-established scope *where* its normative demands ought to be relevant in practice. That is, just as nonideal theories need an *objective* where to aim at, they also need a *ground* from where to depart. Following critical theories, this chapter developed a ground level of relational injustice which encompasses two aspects of injustice: the lack of individual capabilities and a dynamic conception of injustice which broadens the starting point of injustice-reduction action. It distinguished between measures for advancing justice through enhancing individual capabilities and measures for reducing dynamic injustice by exposing and targeting people's actual *doings* and *beings* (e.g. attitudes, prejudices and habits) that maintain and perpetuate the status quo.

It is important to reiterate that the role of this additional level is complementary to the dual framework. It does not discredit the theoretical underpinnings of a dual framework, nor does it call for its revision. Instead, in line with Alkire (2008), this ground level of injustice can be seen as providing a general conceptualisation of the prospective role of the capability metric. It aims at orienting action (at a general level of abstraction) in such a way to better realise its aim of generating justice-enhancing social change. As such, this additional level can be seen as a re-calibrator of the normative guidance provided by a dual framework (i.e. Sen's nonideal theory). It redirects its scope to the practical objective of making the world more just.

In other words, just as nonideal theory does not threaten the validity of an ideal theory, the ground level of injustice does not threaten the nonideal conceptual framework. Both of these extra levels (nonideal theory and the ground of injustice) have the common goal of assisting in guiding political efforts to reduce injustice in the world. This means that these three distinct components are necessary and complementary to construct a more just society. It shows not only that counteracting injustice depends on knowing what we are aiming for (ideal justice) and how to evaluate comparative success (nonideal) but fundamentally that it depends on an adequate diagnosis of the relationality of injustice.

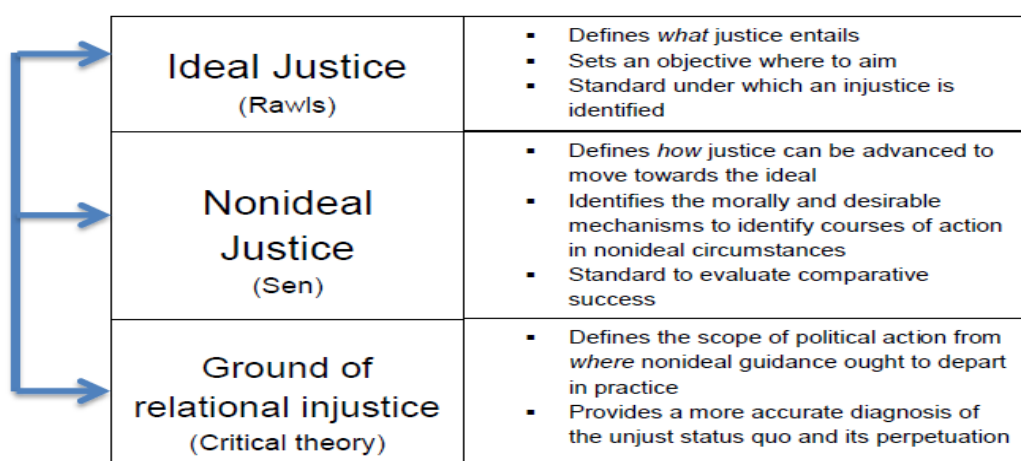
From this perspective, the focus on social practices and interactions does not intend to determine what counts as a 'good' structure and is not directed to regulate behaviour towards a specific way of living. It is *not* about defining a standard of good behaviour to be embodied and enforced upon citizens. But it does call for scrutinising the specific behaviours that reinforce the current unjust status of the world once an injustice is identified. Thus, individual behaviour and social interactions become relevant only when they go against the ideal of justice in which all can pursue their life plan under fair conditions of equality or when these act as barriers or obstructions for reducing injustice. This is concordant with a transitional focus of justice that starts from the urgency of removing injustices (Pereira 2013). It is a natural implication of placing the individual as the ultimate unit of moral concern (Robeyns 2005) while acknowledging the profound impact of the social structure on her real opportunities to *do* and *be*.

In *theoretical* terms, this focus on social mechanisms and relational interactions would imply a minor, though relevant, modification of the notion of comprehensive

outcome. It would mean that public discussion on alternative rankings of social arrangements, besides accounting for the processes as well as the outcomes, should also include information about the social dynamics that bring injustice about. In *practical* terms, it tells us that reducing relational injustice and advancing justice are two different sides of the same coin to find our way to a more just society. On the one hand, advancing justice is forward-looking, remedial, symptom-reducing, and capability-building. On the other hand, reducing (the reproduction of) injustice is better identified with such concepts as transformative looking, preventative action, and transmission reduction.

Thus, the main argument that this chapter has advanced is that a dual framework is purely forward-looking, and as such an extra level of theorisation is required for reflecting about their translation into practice. This is where this dissertation places the contribution of critical theories to further complement the dual framework, in providing the basis for a broader relational conception of the unjust context *where* a framework of justice ought to prompt action. Together, these three levels provide a better-suited comprehensive framework to construct a more just society in practice (see Table 5.1; arrows indicate mutual interaction between the levels).

Table 5.1. A comprehensive (three-level) framework to reduce injustice



Ideal Justice (Rawls)	<ul style="list-style-type: none"> ▪ Defines <i>what</i> justice entails ▪ Sets an objective where to aim ▪ Standard under which an injustice is identified
Nonideal Justice (Sen)	<ul style="list-style-type: none"> ▪ Defines <i>how</i> justice can be advanced to move towards the ideal ▪ Identifies the morally and desirable mechanisms to identify courses of action in nonideal circumstances ▪ Standard to evaluate comparative success
Ground of relational injustice (Critical theory)	<ul style="list-style-type: none"> ▪ Defines the scope of political action from <i>where</i> nonideal guidance ought to depart in practice ▪ Provides a more accurate diagnosis of the unjust status quo and its perpetuation

The next chapter draws on the context of Mexico and its main poverty-reduction social programme called *Oportunidades* to illustrate the theoretical discussion of this dissertation. It will show the difficulties that Sen's approach faces when translated in practice in the absence of an ideal of justice and in the absence of a more relational understanding of injustice.

VI. Assessing injustice-reduction interventions from a three-level framework of justice: The case of Mexico's anti-poverty programme *Oportunidades*

This dissertation argued that development policies could not be detached from discussions about justice. Consequently, previous chapters examined the guidance that a dual framework of justice could offer to orient development policy. They showed that, for the practical purpose of reducing injustice, both approaches were best when working in tandem. A dual approach was, however, still not sufficient, as they remained silent about the way in which their normative ideas could best be translated into social realities, thus compromising their ability to transform unjust realities. To fill this gap, the previous chapter argued that a dual framework needed to be further complemented by a relational perspective of injustice to provide a ground for their recommendations in practice. This implied broadening the scope of injustice-reduction actions in order to address not only the symptoms, namely the individual capability-deprivations, but also the social and relational mechanisms through which injustices were reproduced. This chapter aims to illustrate this theoretical discussion by analysing the context of Mexico, in particular, its main social programme for reducing poverty. It will show the difficulties that Sen's approach faces when translated in practice in the absence of an ideal of justice and in the absence of a more relational understanding of injustice.

Two remarks of caution, however, need to be made beforehand. First, this dissertation does not claim that a connection between theories of justice and actual social policies in Mexico—or anywhere in the world—can be straightforwardly established. Nonetheless, there are good reasons to believe that normative theories do influence social policies (Hickey 2014, Flores-Crespo and de la Torre 2007, Deneulin 2006). For example, when this normative theorisation directly questions the ends and means of development, it provides an alternative benchmark for judging states of affairs or social policies or both. Second, the chapter does not offer an extensive analysis of social policy in Mexico, its socio-political-economic reality, or its historical path to development. The main purpose

is to analyse the main political efforts of the country to counteract injustice in the light of the arguments developed in previous chapters.

The chapter starts by introducing a short historical account of the context of development in Mexico and provides a rationale for selecting Mexico to illustrate the theoretical discussion. Then, it presents the largest anti-poverty policy in Mexico of the last 20 years, namely the 'Human Development programme' *Oportunidades*. It assesses to what extent the programme fulfils the normative demands discussed in the theoretical part of this dissertation. By providing an overview of Mexico's development achievements in the last 30 years, it argues that despite Mexico's success in enhancing people's capabilities, these social improvements have not translated to a more just society. It points out the failure of the programme to account for the social/relational reproduction of injustice and concludes by arguing that this explains, at least partially, its poor performance in transforming people's realities.

6.1 Brief historical account of Mexico

Mexico is an upper middle-income country marked by profound social inequalities that have proven to be resilient throughout the country's recent history. This includes two major historical events—Mexico's independence in 1810 and its revolution in 1910, both triggered by sentiments of (in)justice—as well as recent conscious efforts to reduce poverty and inequality in recent decades.

Mexico achieved independence in 1810. But the 19th century in Mexico can be very broadly summarised as a failed attempt to establish liberal democracy—which was seen as the way forward to solve the hierarchical and unequal society inherited from colonial times. Although the right to vote was formally established in 1824, this right and other rights were usually the privilege of elite minorities (Soto *no date*). After 300 years of Spanish colonisation, the century was characterised by economic and political instability due to external and internal conflicts. For instance, it went from political struggles between powerful minorities, sporadic dictatorships, to a new liberal constitution (1857) which included civil and political rights, up to a period of foreign mandates. The century concluded with a 30-year dictatorship by Porfirio Díaz which lasted until 1910. Although the dictatorship period of Díaz succeeded in generating substantial economic growth,

it was achieved at the expense of the poor, forced displacements, and constant repression (Krauze 2013). Thus, the living conditions of the majority of the people continued to be deficient. Measures of poverty and inequality remained at levels similar to those of the previous century (Sales 2010). For instance, at the beginning of the 20th century, 0.2% of the people working in the agriculture sector owned 87% of all land while 91% were landless (Scott 2008), 80% of the population was illiterate, infant mortality rate was 25%, and life expectancy was 30 years (Human Development Report Mexico—PNUD 2011).

The discontent of the majority of the population engendered the emergence of rebellious groups who, reappraising liberal ideals of the independence movement and previous constitutions, started the Mexican revolution (1910) under the banner of democracy and social justice. Although interpretations and demands of these groups varied, ultimately all of these to some extent influenced the content of the (third) Mexican constitution of 1917, which is still in force today. Arguably, this constitution marked the beginning of a welfare state and it was the first time that indigenous people were recognised as right-holders (Riesco 2007). In addition, the constitution emphasised the liberal ideals of individual rights and moral equality under the law, and it was also concerned with the distribution of wealth, the protection of workers and the worst off of society as well as the socio-economic and institutional conditions necessary to guarantee these mandates (Riesco 2007, Sales 2010). In contrast to the previous ones, this constitution had a profound social character. It was the first constitution in the world to include social prerogatives as fundamental rights (CONAPRED 2012). The aftermath of the revolution, however, was characterised again by political instability, social unrest and civil turmoil in the search of enforcing the promises written in the constitution.

This period led to the formation in 1929 of the political party that is now called the Institutional Revolutionary Party (PRI)⁹⁸. It was not until the presidency of Lázaro Cárdenas (1934–1940)—still the most highly regarded president the country has ever had—that Mexico established some form of institutionalisation and achieved some social stability. This period provided the basis for a more equal development by establishing the foundations of some formal social provision and by carrying out a massive redistribution of land (Scott 2008, Riesco 2007). Unfortunately, this

⁹⁸ PRI remained in power for 70 years in a 'democratic' regime that was described by the Peruvian political writer Mario Vargas Llosa as 'the perfect dictatorship'.

did not last. Leaders of workers and peasants groups were soon formally co-opted by the PRI, and this led to the beginning of a corporatist political structure (Obregón 2013), which in turn enabled the coordination between government and interest groups and facilitated social consensus. In this period, a major agreement led to the adoption of an import-substitution strategy as the favoured model for the industrialisation of the country and to the reduction of the social programmes that protected workers and peasants (Riesco 2007). The import-substitution model was successfully extended until the '80s and it was a period characterised by high economic development. Real wages and social spending increased significantly (from less than 2% of the GDP in 1960 to 9% in 1980), leading to a massive reduction of extreme poverty (see Scott 2008, Cárdenas 2009, Obregón 2013).

Despite its economic success, this rapid industrialisation did not benefit everyone equally (Sales 2010, Riesco 2007). In fact, at early stages of this period, some identified this process of development as the death of the values of the Revolution (Cosío 1947). It was a period of increasing inequality and violent repressions of any social protest against the government—of which the massacre of students in 1968⁹⁹ was the most emblematic. Moreover, the social spending pretending to be 'universal' in education, health, and social security systems was in reality 'highly regressive' (Scott 2008, p. 16), though IMSS (Mexican Institute of Social Security) and ISSTE (Institute of Social Security for Workers of the State) were created in this period. However, close to 60% of the population was without any social security (Sales 2003). On average during the 1970s, the richest 20% of the population held more than 50% of total income (Cortés 2000 cited by Bayón 2009; see also Sales 2010).

Eventually, the import-substitution model became unsustainable at the beginning of the '80s because of the country's enormous fiscal deficit acquired throughout the '70s (the national debt went from \$3 billion in 1970 to \$80 billion in 1982) and thus it became incapable of coping with external shocks (the oil crisis and increasing interest rates) (Obregón 2013). Its collapse in 1982 and the crisis it left

⁹⁹ On 2 October 1968 (now a commemorative day), a group of students, intellectuals and professors of two of the most important universities in the country (UNAM and IPN), along with members of the general public (about 10,000), gathered in the streets to protest the government's censure of dissenting voices, corruption, and social and income divisions. On the orders of the president (Gustavo Díaz Ordaz), the protest was violently suppressed; the federal military and other government's security groups began shooting indiscriminately from different fronts, killing more than 400 persons (unofficial information). Until today, no one has been charged for this event. See Poniatowska (2008, 2013), Martínez (2008).

behind gave rise to a radical change in the political and economic system of Mexico. In 1983, in line with the market-oriented liberalisation model supported by international organisations such as the World Bank and the IMF, the country embarked on a series of structural reforms which included a strong fiscal contraction, economic deregulation, trade liberalisation, openness to foreign investment, financial liberalisation, and privatisation (Cárdenas 2009). This model continued throughout the '90s and was further consolidated when the country joined NAFTA (North American Free Trade Agreement) in 1994 (Sales 2003). According to this view—as expressed by Pedro Aspe, Mexican Finance Minister from 1982 to 1994—‘modernisation’ through a liberal market was the best way not only to promote economic development and opportunities but also to fight poverty and achieve a more just society (see Aspe 1993).

The consequences of these reforms, however, were not as expected. After the first 12 years of implementation, the poor social, political, and economic performance—exemplified by the uprising of the Zapatista movement and the devastating financial crisis in 1994—facilitated the first political alternation in Mexico’s history. In 2000, the right-wing National Action Party (PAN) won the presidential elections after 71 straight years of PRI governance. Yet the two consecutive presidential terms in charge of PAN did not bring any substantial change to the model of market liberalisation as the means to promote development and justice (Medrano 2011, Bayón 2009, Riesco 2007), which opened the door to PRI’s return to power in 2012.

In sum, this market liberalisation has defined the trajectory of Mexico for the last three decades and continues to shape its social and political model today. During this period, Mexico has been somehow successful in ensuring macroeconomic stability and building a relatively strong economy. Today, Mexico is the 12th largest economy in the world (The World Factbook 2014¹⁰⁰) and the second largest in Latin America (after Brazil). Thus, while acknowledging some of its important challenges, forecasters generally perceive Mexico’s future in positive terms (OECD 2015a, 2012). It is considered a ‘regional powerhouse’ with growth expectations ranging from 2.9% to 3.5% in 2017 (World Bank 2015¹⁰¹). Yet, notwithstanding these achievements of a liberal market strategy, Mexico has not

¹⁰⁰ Available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html>.

¹⁰¹ Available at <http://www.worldbank.org/en/region/lac/overview>.

been able to keep its promise of a social arrangement able to provide better and more equal opportunities for people to thrive. More importantly, this strategy has been somehow disappointing in achieving the country's historical demand for social justice and thus in enabling the majority of people to pursue their life plan under conditions of equality (section 6.3).

Putting aside political, historical, and other external circumstances, this chapter considers that this failure can also be related to theoretical debates about justice (see also Sales 2003), specifically the theoretical guidance to confront unjust situations. It illustrates this failure in the light of the specific strategy favoured by the Mexican government to deal with one of the enduring challenges that it still faces, namely widespread poverty, and in particular in the light of Mexico's largest anti-poverty programme, *Oportunidades*, which is considered an international success in this endeavour. *Oportunidades* will serve as an *ad hoc* example to illuminate and assess Sen's comparative framework of justice.

Rationale for case study

For at least three reasons, Mexico is a very interesting case to illustrate the normative theoretical framework developed in this dissertation. First, the historical context of inequality and persistence of poverty that prevails in Mexico poses a real challenge for successfully translating normative demands of theories of justice into specific political action. It questions whether a more just society can be attained through the narrow view of individual capabilities while rendering invisible the mechanisms that underlie the unjust contexts that are meant to be transformed. Second, as described above, the country's recent history has been shaped by liberal ideals and an explicit commitment to social justice, both of which are enshrined in the country's three constitutions (1824, 1857, 1917) (Sales 2010). Moreover, throughout these periods, there have been different conceptualisations, different ways of evaluating it, and different routes taken in the pursuit of a more just Mexican society. For instance, there have been attempts at universalising social services, ensuring minimum levels of income, or procuring opportunities through the market (Sales 2003). Thus, in this context, theoretical discussions about justice are indeed highly relevant. Third, despite the varying understandings of justice in Mexico, there has always been a constant call to provide some form of protection to the most vulnerable. In this regard, in recent decades, Mexico has been internationally praised for its ground-breaking method

to fight poverty and exclusion via its main social programme, *Oportunidades*. In fact, owing to its success, similar Conditional Cash Transfer (CCT) programmes have been replicated throughout the world. Consequently, examining Mexican efforts towards fighting poverty from the perspective of social justice can potentially be of relevance to other contexts well beyond the context of Mexico.

6.2 Reducing injustice: The case of *Oportunidades* and Sen's idea of justice

From the previous section, one could interpret Mexico's recent history as a continual search for an adequate approximation of justice and development which then to some extent determines the kind of political action taken towards that end. In this regard, theoretical discussions about *what* justice entails and *how* it can be achieved are of fundamental importance for Mexico's construction of a more just society. This dissertation is concerned with how injustice can be reduced. Particularly, it is concerned with analysing the practical guidance that conceptions of justice can offer for this purpose. Therefore, the focus of this analysis is not about the justness of Mexico's overall social and institutional arrangement but about the kind of actions taken to remedy injustice and, more importantly, about how these actions can be improved according to the theoretical framework developed earlier.

6.2.1 *Oportunidades* and Sen's idea of justice

On average, the percentage of people living below the national poverty line in Mexico over the last 30 years is 52.7% (World Development Indicators). In this respect, the human development programme *Oportunidades* has been the government's main response to the massive challenge of endemic poverty in Mexico for more than two decades¹⁰².

¹⁰² Anti-poverty programmes during the market liberalisation initiated in 1988 under the name of PRONASOL whose targeting, selection, and delivery method were later improved and replaced by the programme called PROGRESA in 1997 (see Scott 2008, Levy 2006). In 2002, maintaining the main tenets of the programme but expanding its coverage, *Oportunidades* replaced PROGRESA (Cárdenas 2009). Consequently, the programme is sometimes referred to in the literature as *Progresal/Oportunidades*. However, the programme changed its name in January 2015 to PROSPERA and it announced some further developments in terms of promoting employment,

Oportunidades is considered an archetype and one of the most successful examples of the now widely spread CCTs around the world (Tucker 2010, Levy 2006). It reached 6.1 million families in 2015, which is equivalent to around 25% of the population, and accounted for 30% of total social expenditure in 2010 (INEGI). Moreover, it plays a key role, along with other policies, in the second national goal: 'An Inclusive Mexico' of the 2013–2018 National Development Plan. The main objective of *Oportunidades*, similar to that of other CCTs, is to reduce poverty in the present as well as in the future through a system of shared responsibility, which implies engaging 'poor families directly in overcoming their difficult circumstances' (Levy 2006, p. 12). This is achieved by an integrated approach of co-responsibility in which income transfers are given to the families on the condition that they comply with certain requirements and investments in relation to education, health and nutrition. The amount of money provided, health check-ups, in-kind transfers as well as other provisions vary according to people's heterogeneities (age, gender, etc.)¹⁰³.

This innovative method of fighting poverty has been praised worldwide and its replication has been supported by international organisations such as the World Bank and the IMF (United Nations Development Programme [UNDP] 2011, Medrano 2011). Today, similar programmes have been implemented in several countries of Latin America, Africa and Asia. But more importantly, this programme also changed the way in which poverty has been understood in Mexico. In this sense, market liberalisation transformed not only the interpretation of the egalitarian sentiments embodied in the 1917 Mexican constitution but also how injustice was to be understood and thus how it could be reduced. From this perspective, strategic interventions of the government were reduced to being primarily about respecting 'the initiatives of the community and to promote individual achievement' (Aspe 1993, p. xi). As such, the governments of the last three decades have been concerned solely with the endowment of equal opportunities, which in turn are seen as being better realised through an adequate economic environment. In this context, direct assistance has been justified only to those who cannot help themselves. As the deputy minister of finance from 1994 to 2000, Santiago Levy, puts it, to the '...undernourished [who] are more vulnerable to disease, are at risk of developing anthropometric deficiencies, are

access to financial services, and more education. This chapter, however, refers to the programmes *Progreso/Oportunidades*.

¹⁰³ Information available in SEDESOL's (Social Development Ministry) website at <https://www.prospera.gob.mx/Portal/wb/Web/inicio>.

at times lethargic and, in general, are less able to lead a healthy life with sufficient energy to satisfactorily perform tasks in the labour market and/or participate in educational activities' (Levy 1991, p. 7). Meanwhile, the moderately poor (i.e. those who lack basic needs but are still able to participate in the labour market) 'can best be helped by [indirect] policies that widen the set of opportunities to them' (Levy 1991, p. 8).

Thus, reducing poverty was no longer about transferring resources to the poor but was mainly about expanding people's opportunities and investing in people's nutrition, health and education on the eve of 'a future that is built on the direct participation of poor households in overcoming their conditions' (Levy 2006, p. viii), as World Bank President James Wolfensohn described it in his foreword to Levy's book. In other words, in line with Sen's framework of justice, Mexico's main anti-poverty programme identifies the poor in terms of 'the deprivation of basic capabilities rather than merely as lowness of incomes' (Sen 1999a, p. 87). Thus, its main goal has been about expanding people's capabilities and respecting people's agency. In fact, the operational rules of the programme explicitly refer to 'expanding the capabilities of nutrition, health, and education of people...in order to contribute to their quality of life as well as increasing their productive capacity' while conceiving persons as active citizens who are 'agents of their own development' and who can 'overcome poverty through their own efforts' (SEDESOL 2015¹⁰⁴; see also Levy 1991). Therefore, the basis upon which *Oportunidades* operates is indeed in accordance with Sen's notions of capability and agency.

The chapter does not suggest that *Oportunidades* is the quintessential embodiment of Sen's approach in practice or that the capability approach is indeed the conceptual framework behind it. Certainly, there were different socio-political and economic circumstances within the country that also influenced the creation of *Oportunidades* (Levy 2006). Moreover, Flores-Crespo and de la Torre (2007) suggest that the adoption of the language of 'capabilities' and 'Human Development' within *Oportunidades* is rather vague, as apparently it can be more closely related to the idea of 'human capital'¹⁰⁵. Similarly, the use of the notion of

¹⁰⁴ Available at

http://www.gob.mx/cms/uploads/attachment/file/45627/ROP_2016_PROSPERA.pdf.

¹⁰⁵ The idea of human capital, however, is not in opposition to the notion of capability. Rather, the former is contained within the latter (Sen 1999a, pp. 292–296). As such, an investment in human capital is also an investment in capabilities.

responsibility and agency seems to have a gender bias against mothers (Molyneux 2006), whose own capabilities are not appropriately taken into account (Agudo 2010). But despite these pertinent caveats, it is certainly the case that *Oportunidades* is in line with the intention of expanding the main dimensions favoured by a capability-based approach and it is in accordance with the way these achievements are usually measured. Ultimately, it does focus on enhancing the capabilities and the agency of the worst off of society. As such, to the extent that this expansion is successful, it would also be in line with Sen's comparative framework, which is concerned with advancing justice through the expansion of capabilities¹⁰⁶.

6.2.2 Sen's notion of 'advancing justice' in the context of *Oportunidades*

One can easily be seduced by Sen's pragmatic framework. It convincingly argues that the wellbeing of individuals can be improved, and thus justice advanced, without having to identify a perfectly just arrangement. At first sight, *Oportunidades* seems to prove Sen right.

Oportunidades has been extremely successful not only in promoting people's capabilities but also in promoting public discussion. In fact, one of the features that made it innovative when it first started as a CCT, and what made it successful thereafter, has been that it is openly evaluated on a regular basis by internal as well as external bodies, such as the International Food Policy Research Institute (IFPRI) (e.g. Debowicz and Golan 2013, Skoufias 2005, Skoufias and McClafferty 2001; see also Cruz et al. 2006)¹⁰⁷. In addition, there is a sizable literature about *Oportunidades* and its impacts in different domains (e.g. Adato and Roopnaraine 2010, Agudo 2010, Agudo 2012, Behrman et al. 2007, Handa et al. 2007, 2009, Molyneux 2006, Todd et al. 2010, Debowicz and Golan 2013). Using different methodologies, all of these studies analyse to what extent *Oportunidades* facilitates, thwarts or affects people's lives in one way or another and how the quality, effectiveness and scope of the programme can be enhanced. Among all

¹⁰⁶ This is further confirmed by Drèze and Sen (2013), who see CCTs generally as a positive way to promote people's freedom (see chapter 7).

¹⁰⁷ For other evaluations and recommendations, see

<https://www.prospera.gob.mx/EVALUACION/>,

<http://www.coneval.gob.mx/evaluacion/Paginas/Evaluacion.aspx>,

<http://www.ifpri.org/dataset/mexico-evaluation-progres>.

and

evaluations, there is a large consensus about its positive impact in its stated objectives of reducing poverty by improving people's lives within the domains of income/consumption, health and education.

For instance, there is evidence that *Oportunidades* increases school enrolment for both rural and urban populations, and especially girls, in junior high school and high school¹⁰⁸; it reduces the incidence of mortality of mothers and children; it increases voluntary health clinic visits; it increases food intake, healthier diets, and nutrition of household members; it increases children's height and reduces the proportion of obesity; it reduces the incidence of diseases in adults as well as new-born children; and it improves reproductive health of beneficiaries (see Cruz et al. 2006, Skoufias 2005). Similarly, according to a special UNDP report on south-south cooperation (2011), *Oportunidades* has boosted beneficiary households' food intake by 22% and secondary school enrolment by 11% among girls and 7.5% among boys, has increased enrolment for secondary school by 11% for girls and 7.5% for boys, has increased health visits by 30% to 60% for children under 5 years old, has reduced the incidence of diseases by 12% in 0- to 2-year-old children, and has reduced the proportion of malnourishment among children by 17.2%. Furthermore, all of these findings are confirmed by a ten-year evaluation of the programme (Saucedo 2012) as well as by qualitative studies (Molyneux 2006).

These results are important social achievements in themselves, and to the extent that they improve people's lives by expanding the real opportunities of what people can *do* and *be*, one can easily concede that they account for an advancement of justice in Sen's own terms. That is, from a pure comparative perspective where a social arrangement is considered to be more just if there is less capability-deprivation than in another, the situation in Mexico is more just with *Oportunidades* than without it. A Mexico where fewer people suffer from malnutrition and starvation and more people are able to be educated is more just even if there is no agreement about the right principles that ought to regulate Mexico's social arrangement and even if poverty has not been completely eradicated yet. In this way, poverty-alleviation in Mexico seems to be a successful illustration of Sen's framework being able to reduce injustice *on its own*:

¹⁰⁸ Mexico's school system is composed of six years of primary school, three years of junior high school, and three years of high school before going to the university.

- (1) First, there is a social agreement about assisting the worst off of society. Even if the reasons underlying it might vary across different actors, the agreement is enough to motivate action to remediate it.
- (2) Second, the identification of the poor is informed by a capability understanding of poverty.
- (3) Third, *Oportunidades* is rooted in an understanding of individuals as agents of their own development and it expands people's basic capabilities (and agency).
- (4) Finally, the programme is subject to external and internal evaluations in order to improve it; that is, it facilitates public discussion about how best to remediate the situation.

At first sight, it seems hard not to be excited about this social advancement. Sen does seem to offer a framework that is pertinent to situations of injustice that pervade the world. But is Sen's IJ really constructing a more just society? This dissertation argues that while acknowledging and supporting the social achievements that Sen's nonideal framework is likely to promote, these positive signs of hope can obscure other relevant aspects which are of first importance for any action aimed at constructing a more just society.

6.3 Assessing Sen's IJ from an ideal perspective

Leaving aside technicalities and corrections of the programme itself, to assess adequately the potential reach of Sen's framework in promoting justice, one has to recognise that this evaluation is inextricable from the very conceptualisation of justice itself. Certainly, Sen's own position is that there is no need to identify what justice entails, and this is why a capability-enhancement of the sort occurring in Mexico represents a success (even if limited) from his perspective. In fact, this accomplishment is echoed by many academics and international organisations. For example, aside from the World Bank and the IMF, the OECD considers *Oportunidades* to be one of the 'important examples' about how societies can be better off (2015b). But although the case of *Oportunidades* in Mexico may nurture the illusion of the possibility of advancing justice even in the absence of an ideal conception of justice, one cannot ignore the fact that this 'reduction of injustice' takes place within a particular understanding of development and justice, namely a neoliberal framework whose main goal is that of promoting economic growth

and productivity, and where assistance to the worst off of society is used merely as a tool for legitimising the political and economic system (see Bayón 2009, Riesco 2007, Levy 1991). Hence, one cannot disassociate *Oportunidades* from this larger structure which may or may not be in the direction of constructing a more just society. It is in this sense that this dissertation has argued that one cannot separate the practical aim of advancing justice from a conception of what justice entails.

If justice has to do with respecting people's dignity and rights equally and treating people as ends in themselves, one would expect that moving in the direction of justice would necessarily entail that, in the long run, 'advancing justice' would be associated with social improvements of this sort. That is, creating a more just society is not solely about promoting social arrangements where individuals have fewer deprivations but also about creating the conditions that enable all individuals to be regarded as equals and where each can exercise their rights in order to pursue their life plans. Although these two ideas may go together, they are not exactly the same. Whereas a more just society in the broader sense of equal rights and liberties within a context of fair opportunities necessarily involves reducing people's deprivations, the reverse is not necessarily true. That is, achieving fewer deprivations may not automatically be an indication of a more just society.

6.3.1 Mexico's development from 1980 to 2014

This section shows that, despite Mexico's economic capacity and some important achievements in the social realm, the liberal market strategy of the last 30 years and *Oportunidades* have failed in keeping its promise of building social arrangements able to provide better opportunities and a more just society for people to thrive. The liberalisation project adopted by Mexico since 1983 signified a whole restructuring of the role of the state and its relationship with the mode of production. The state was no longer seen as a guarantor of people's welfare but as the problem. Modernisation required deregulating the economy, macroeconomic stabilisation and less state intervention. The former finance minister explained the idea of modernisation in the following terms:

We know that a bigger state is not necessarily a more capable state... The stabilization of the economy through realistic budget management, the privatization of state-owned enterprises, fiscal reform, economic deregulation, financial reform, the liberalization of trade, the renegotiation of the external debt, and the strengthening of land tenure rights is the new way in which the people of Mexico are carrying out an ambitious reform of the state. We are facing the challenge of making the transition to an open economy and an open society. In abandoning its role of proprietor, the state has taken on greater solidarity with the needs of the poor (Aspe 1993, p. xii).

From this perspective, the state was to a large extent responsible for the economic, political and social failures of the past. Hence, the solution to the problems generated by the previous state-led development model was to be found in the market. But despite some advancements in some key social indicators, the results have been disappointing overall (Obregón 2013, Cárdenas 2009).

Income measures

Even on a narrow measure of income per capita, Mexico's progress has been insufficient throughout the last three decades (Obregón 2013). As Table 6.1 shows, the decade of the '80s was first heavily affected by the crisis, resulting in an overall negative effect in GDP per capita, averaging -0.2% from 1981 to 1990. It then recovered during the '90s despite the far-reaching impact of the financial crisis of 1994 (-7.6%), and although it has decelerated (mainly due to the world financial crisis in 2008), from 2011 to 2013, income-per-capita growth continued to be positive.

Table 6.1. GDP per capita of Mexico (1982–2013) (constant 2005 USD)

Year	GDP per capita	GDP % per capita (annual)		GDP % growth	GDP % growth per capita
1970	4641.11	3.2	1981-1990	1.9	-0.2
1980	6675.4	6.7	1991-2000	3.6	1.7
1982	6914.4	-2.7	2001-2010	1.8	0.5
1990	6525.85	2.9	2011-2013	3	1.8
1995	6531.92	-7.6			
2000	7689.1	3.7			
2009	7788.27	-5.9			
2014	8519	-0.2			

Source: World Development Indicators

In general terms, seen from a long-run perspective (Table 6.2), growth in income per capita in Mexico has been very modest. In 2014, it was only 18% higher than what it was in 1982, which is very low in comparison with the achievements of other Latin American countries in the same period, such as Colombia (95%) or Chile (185%), and was below the average growth in Latin America (43%). Similarly, Obregón (2013) shows that, in 1980, Mexico's income per capita was 54% higher than in South Korea and 20% higher than in Taiwan but that, by 2008, Mexico produced per person only 41% and 38% of what each of these countries was producing by then.

Table 6.2. GDP per capita (1982–2013) various countries (constant 2005 USD)

Country	1981	1990	1995	2000	2005	2010	2013	2014	% change 1980-2014 ^(a)
Mexico	7199.83	6561.50	6531.92	7768.75	7893.97	8037.94	8446.80	8521.89	1.18
Chile	3456.62	4144.15	5720.02	6674.23	7728.61	8677.94	9773.16	9853.53	2.85
Colombia	2391.64	2753.61	3158.23	3036.77	3386.03	3984.29	4497.20	4657.75	1.95
Costa Rica	3049.85	3170.22	3693.41	4162.83	4700.01	5504.14	6043.75	6188.14	2.03
Latin America & Caribbean (all income levels)	4296.38	4110.09	4434.61	4788.32	5095.05	5717.62	6118.86	6133.38	1.43

Source: World Development Indicators

(a) Final year (2014) divided by initial year (1981)

Human development measures

One of the major contributions of Sen's work has been its influence in understanding development from a human-centred approach. In this respect, the Human Development Index (HDI) presented by the UNDP measures development in three dimensions of life with four indicators: education (expected years of schooling and mean years of schooling¹⁰⁹), health (life expectancy at birth), and standard of living (gross national income [GNI] per capita). With an HDI value of 0.756 in 2013, Mexico belonged to the high development group and was ranked 71 out of 187 countries.

¹⁰⁹ *Expected years of schooling* is 'the total number of years of schooling a child of school-entry age can expect to receive if prevailing patterns of age-specific enrolment rates stay the same throughout the child's life'; *mean years of education* is 'the average number of years of education received in a life-time by people aged 25 years and older' (UNDP).

Table 6.3. Human Development Index of Mexico (1980-2013)

	Life expectancy at birth	Expected years of schooling	Mean years of schooling	GNI per capita (2011 PPP\$)	HDI value
1980	66.6	10.2	4.0	10,769	0.595
1985	68.8	11.1	4.8	11,433	0.631
1990	70.8	10.6	5.5	11,982	0.647
1995	72.8	10.7	6.4	11,941	0.670
2000	74.4	11.6	6.7	14,282	0.699
2005	75.6	12.2	7.5	14,582	0.724
2010	76.8	12.7	8.3	15,173	0.748
2011	77.1	12.8	8.4	15,509	0.752
2012	77.3	12.8	8.5	15,867	0.755
2013	77.5	12.8	8.5	15,854	0.756
% 1980-2013	16%	25%	113%	47%	27%

Source: Human Development Report 2014

* Author's calculations

Table 6.3 shows Mexico's historical trend in each of the HDI indicators since 1980. It shows that, despite its deficient progress in GDP per capita, Mexico has been successful in increasing people's opportunities to live a long and healthy life, access knowledge, and have a decent standard of living. In little more than 30 years, life expectancy increased by 10.9 years (16%), expected years of schooling by 2.6 years (25%), and years of schooling by 4.5 (113%); and in contrast with GDP, GNI per capita increased 47%¹¹⁰. In total, this amounts to an overall improvement of 27% in Mexico's HDI value. To a large extent, these important achievements are the result of *Oportunidades*. It is important to note, however, that despite the substantial progress achieved in education, this is the dimension in which Mexico performs the worst in relation to similar countries. The reason is the low gross enrolment ratio in secondary (87%) and tertiary education (28%) in comparison with the average in other high human development countries (91% and 44% respectively), which in turn explains the low score in mean years of schooling (Obregón 2013). According to the same author, this reveals the low quality of the education system as well as the high levels of inequality that characterise the country.

¹¹⁰ The difference between GDP and GNI may be explained because the latter provides a more comprehensive measure of income. It also accounts for property, dividends, and income earned by Mexicans living within the country and abroad.

Inequality measures

As mentioned in the brief account of Mexico's historical development, inequality has been one of the most enduring features of the country throughout its history. Inequality is intrinsically problematic if it fails to respect all individuals' dignity equally and is instrumentally problematic for social cohesion, democracy, and economic growth, amongst other issues (see OECD 2015b). In this respect, Mexico's performance is worrying in several measures of inequality. Indicators show almost no improvement since the beginning of the market-oriented model of development and social justice. In fact, while inequality in Latin America has been declining during the last decade (Ferreira et al. 2013), Mexico is one of the few exceptions, with a 'small reversal' trend in the last available data (Tsounta and Osueke 2014, p. 4). This result is consistent with the data shown in Table 6.4.

According to the OECD report on inequality (2015b), Mexico's last available data shows a Gini coefficient of 48.2, which indicates very high levels of inequality¹¹¹. This score is higher than in 1985 (45.2) and is equal to its average value of the last 30 years. Despite minor variations, this trend is confirmed by data from the World Bank. In another measure of inequality, the ratio of average disposable income of the richest 10% divided by the average disposable income of the poorest 10%, Mexico shows the worst score of all OECD countries (30.5 in contrast to an OECD average of 9.6!)¹¹². In 2012, the richest 10% have captured 36.7% of total income and the poorest 10% only 1.2%.

¹¹¹ The Gini index estimates how unequal the distribution of income is in a country in relation to a perfectly equal distribution. A Gini coefficient of 0 represents perfect equality whereas an index of 100 implies perfect inequality.

¹¹² Note that OECD calculations in the ratio of top10 to bottom10 of income are higher than those calculated using data of the World Bank where, in the same year (2012), the same ratio is 21. This difference is explained by the type of data used. Whereas the OECD uses average disposable income, the World Bank uses consumption data. Here, it is considered that data on disposable income captures best the levels of inequality in Mexico as it is unlikely that the bottom 10% would have equal opportunities to save.

Table 6.4. Inequality in Mexico (1985–2013)

	1985	1989	1992	1994	1996	1998	2000	2002	2004	2005	2006	2008	2010	2012	1985-2012
GINI (OECD) _a	45	..	..	52	..	..	51	..	47	..	..	48	47	48	48.2
Ratio \$10/90 _a	22	..	..	34	..	..	31	..	26	..	..	27	29	31	28.2
GINI (WB) _b	..	52	51	52	49	49	52	50	46	51	48	48	47	48	49.4

Source:

a OECD 2015(b). Data available at <http://www.oecd.org/social/income-distribution-database.htm>

b World Development Indicators

c Total Average (author's calculation)

Similarly, following the analysis presented by Obregón (2013), the severe problem of inequality in Mexico can also be appreciated by looking at the inequality-adjusted HDI (Table 6.5), whose value declined from 0.756 to 0.583. This implies a loss of 22.9% in this indicator which is higher than the average loss of countries within the group of high human development and is equal to that of the world. However, in line with the Gini coefficient and the income ratio presented above, Mexico's HDI inequality is primarily explained by income differences, followed by education and health respectively. In this regard, Obregón (2013) identifies that 'out of the 135 countries whose Gini coefficient is reported by the UN, only 25 have a more unequal income distribution than Mexico, and from these, only two countries belong to the group of very high HDI and only five belong to the group of high HDI' (p. 20).

Table 6.5. Inequality-adjusted Human Development Index, Mexico

	HDI	Inequality-adjusted HDI	Overall % loss	%Inequality Life Expectancy	%Inequality Education	%Inequality Income
Mexico	0.756	0.587	22.4	10.9	19.7	34.6
very high HDI	0.896	0.788	12.1	4.9	8	22.5
high HDI	0.744	0.6	19.4	10.7	16.8	29.4
medium HDI	0.63	0.468	25.8	21.9	34.7	19.8
low HDI	0.505	0.343	32	35	37.9	22
World	0.711	0.548	22.8	17.4	26.8	24

Source: UNDP – Human Development Report 2014

Poverty measures

Mexico has failed not just in ensuring a certain social minimum for people to pursue their own life plan but also in reducing the amount of people facing these

deprivations. This is despite Mexico's increased efforts to combat poverty and the success obtained by *Oportunidades*. There is, however, a methodological difficulty in presenting a consistent long-term trend of poverty in Mexico since there is no consistent measure. Nonetheless, reliable national surveys, including information about income measures, consumption and non-monetary goods of the population of Mexico, have existed since 1977, and these surveys have been carried out consistently by the equivalent to the Office for National Statistics in the UK (INEGI acronym in Spanish) since 1984 (Székely 2005). Therefore, to a certain extent, it is possible to recreate historical figures accounting for the current definition of poverty with information based on these past surveys.

In addition, as mentioned before, Sen's capability approach has been very influential in national conceptions of poverty. Hence, there is a growing consensus about the multidimensional character of poverty and the irreducibility of different dimensions of poverty to a unidimensional measure¹¹³. In line with this idea, since 2008, Mexico has a multidimensional conception of poverty which includes income measures as well as access to social rights. In the space of income, there are two different poverty lines, namely an economic line of *minimum* wellbeing (*línea mínima de bienestar*) and an economic line of (*moderate*) wellbeing (*línea de bienestar*). The former accounts for the minimum amount of income necessary for survival, that is, sufficient to afford a basket of goods to satisfy a person's minimum accepted levels of nutrition. The latter (moderate wellbeing) refers to the amount of income necessary to afford minimum levels of education and health, in addition to a minimum level of nutrition. In the space of rights, poverty measures include six dimensions: access to education, health, social security, home quality and spaces of the dwelling, access to basic services in the household, and nutrition¹¹⁴.

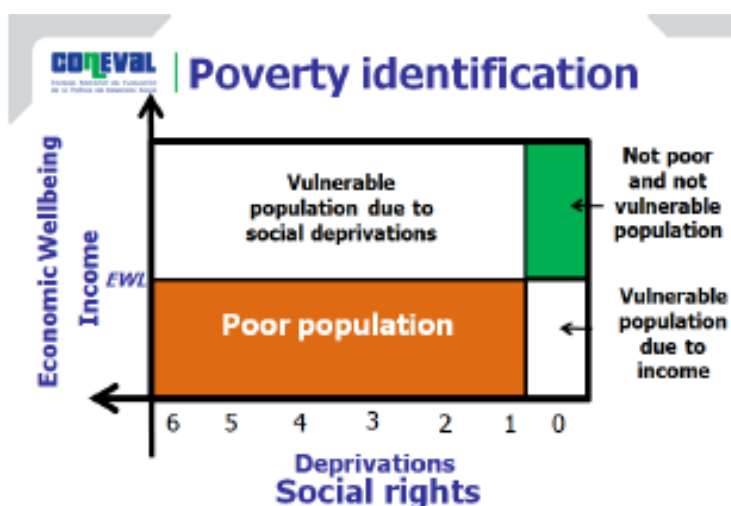
On the basis of these indicators, a person can fall in any of the following four categories (Figure 6.1): a person can be (a) multidimensionally poor if she is deprived in at least one of the rights and has a level of income below the *moderate* poverty line, (b) extreme multidimensionally poor if she is deprived in three or more social rights and has a level of income below the *minimum* poverty line (not

¹¹³ For literature on multidimensional poverty, see, for example, Alkire and Foster (2009), Alkire and Santos (2010).

¹¹⁴ Information available at http://www.coneval.gob.mx/Paginas/principal_EN.aspx. See also CONEVAL (2010a, 2010b) available at http://www.coneval.gob.mx/rw/resource/coneval/med_pobreza/MPMMPingles100903.pdf.

shown in the figure), (c) vulnerable in income if she has an income below the moderate poverty line but is not right-deprived, or (d) vulnerable by rights if she is not income-poor but she is deprived in at least one right.

Figure 6.1. Identification of multidimensional poverty



Source: CONEVAL

This conceptualisation of multidimensional poverty already illustrates the use of Sen's notion of capability for the practical purpose of reducing injustice. It is also perfectly in line with Rawls' ideal conception of justice which provides a philosophical justification for achieving equal rights for all. Thus, measuring income poverty along with access to rights provides a more accurate, albeit limited, description of how close or how far a particular society is from constructing a more just society at a given moment in time. In this respect, Mexico does not fare well (Table 6.6). According to the last multidimensional poverty report carried out by the national entity in charge of measuring it (CONEVAL), in 2014, 46.2% of the population was multidimensionally poor (55.3 million) and 11.4 million of that population lived in extreme multidimensional poverty (i.e. deprived in three or more rights and earning an income not be sufficient for minimum nutrition levels). When one considers each of the two dimensions (income and rights) in isolation, these figures become more worrying still. On the one hand, the report shows that 72.4% of the population was deprived in 2014 in at least one right and that 22.1% was deprived in more than three rights, and the average intensity was 2.1 deprivations. On the other hand, 53.2% of the population had an income below the economic wellbeing line and 20.6% was below survival income. Put another

way, only 20.5% of the population was non-poor and non-vulnerable in 2014 (little rectangle at the top right in Figure 6.1).

Table 6.6. Multidimensional poverty in Mexico (percentage, population and intensity)¹¹⁵

	Percentage	In millions	Intensity (Average deprivation)
Multidimensional Poverty			
Population in multidimensional poverty	46.2	55.3	2.3
Moderate Poverty	36.6	43.9	1.9
Extreme Poverty	9.5	11.4	3.6
Vulnerable by rights (but not income-poor)	26.3	31.5	1.8
Vulnerable by income (but not right-deprived)	7.1	8.5	0
Non-poor and non-vulnerable	20.5	24.6	0
Right-deprivation			
Population with at least one deprivation	72.4	86.8	2.1
Population with at least three deprivations	22.1	26.5	3.5
Income-deprivation			
Population below economic wellbeing line	53.2	63.8	2
Population below minimum wellbeing line	20.6	24.6	2.5

Source: Coneval (2015)

A weakness of this measure, however, is that there is no historical data on the evolution of multidimensional poverty in the last 30 years¹¹⁶. Nonetheless, as mentioned above, there is historical data on a similar conceptualisation of poverty referred to as ‘patrimony line of poverty’ or ‘national poverty line’ that accounts for income and non-income dimensions (health, education, clothing, housing and transportation). Based on this data, it is possible to see that levels of poverty at this national poverty line have remained considerably high despite social expenditure rising from 6.1% of the GDP in 1990 to 12.5% in 2008 (Cárdenas 2009). In 2014, more than half of the population (53.2%) were living in poverty (World Development Indicators). More importantly, aside from the period of 2002–2006, this pattern has not changed since the end of the ’80s (Table 6.7). As Figure 6.2 shows, 1994–1998 reported the most dramatic levels of poverty, mainly because of the large social cost of the financial crisis in 1994. It then recovered, and from 2002 to 2006, there was a short period of improvement (from 50% to

¹¹⁵ Data available at http://www.coneval.org.mx/Medicion/MP/Paginas/Pobreza_2014.aspx.

¹¹⁶ See CONEVAL (2015) for historical data from 2008 to 2014.

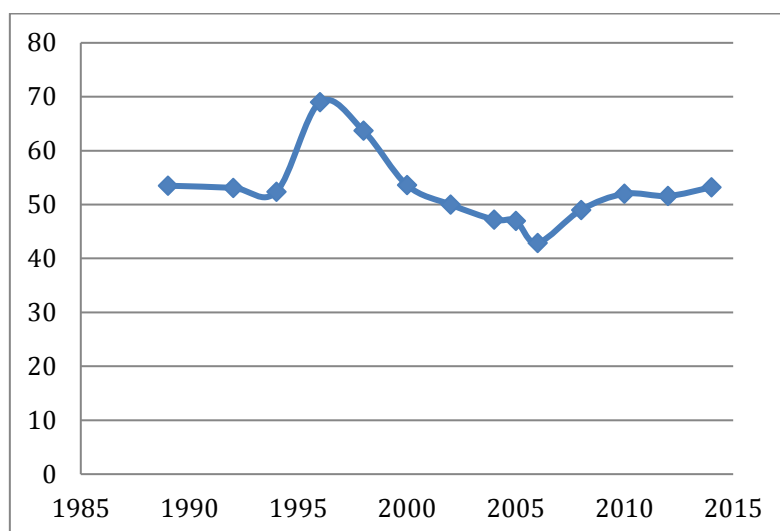
42.9%), but there has been a steady reversal ever since, despite a budget increase of 126% in anti-poverty programmes between 2006 and 2012 (OECD 2015a).

Table 6.7. Evolution of poverty (income and non-income dimensions; 1989–2014)

	1989	1992	1994	1996	1998	2000	2002	2004	2005	2006	2008	2010	2012	2014
% Poverty	53.5	53.1	52.4	69	63.7	53.6	50	47.2	47	42.9	49	52	51.6	53.2

Source: Development Indicators

Figure 6.2. Evolution of poverty



After reviewing some main development indicators, it is certainly possible to be at least sceptical about the achievements of Mexico's model of development in promoting a more just society in the last 30 years. In fact, some suggest that *Oportunidades*—despite expanding people's capabilities—operate not within the logic of justice, redistribution and rights, but within the logic of the market where enhancing the productive capacity of individuals is in the best interest of the current utilitarian model of development and social justice (e.g. Bayón 2009). Therefore, unless we are willing to shrink the notion of 'advancing justice' to agreed minimum social advancements expressed in terms of capabilities while leaving everything else the same, then invoking an ideal conception of justice seems unavoidable. For seen in isolation, it would seem that Sen's nonideal framework is much more compatible with the utilitarian framework from which he tries to distance himself. This is why this dissertation argues that an ideal

conception of justice is needed in order to judge whether injustice has been reduced in Mexico or not.

6.3.2 Adding ideal justice: ‘Advancing justice’ versus constructing a more just society

An ideal of justice (even if imperfect and always contestable) provides a systematic framework for identifying injustice and provides an objective to guide the direction in which to move. Thus, in line with Mexico’s recent history characterised by the struggle of interpreting the principles that ought to guide its path to development and social justice, it is assumed thereafter that Rawls’ ideal principles of justice best account for the moral intuitions of justice enshrined under the 1917 constitution. This is certainly in accordance with its liberal roots, in its guarantees of civil, political and social rights, and with its concern for improving the lives of the least advantaged. This move is useful to evaluate Sen’s framework from an ‘Archimedean point’ of what we expect justice to do. For example, this view of justice would imply that ‘advancing justice’ would have to be associated with social improvements in terms of equal rights, equal fair opportunities, and toleration of income inequalities to the extent that these are for the benefit of the worst off of society. Under this interpretation, the association of Mexico’s social improvements (i.e. capability-enhancing) with a notion of ‘justice-enhancements’ becomes much less convincing.

Overall, the preceding section already indicated, through long-term trends in some key socio-economic indicators, that not enough has been done. All indicators showed little, if any, progress in the last three decades. Adding to this conclusion, and equally relevant for considerations of justice from a Rawlsian perspective, is Mexico’s failure to safeguard people’s basic political and civil rights and thus its attempts to establish a credible democracy.

In this regard, the year 2000 signified a major step forward for Mexico’s democracy when the first pacific and transparent political alternation took place after 71 years of PRI’s governance. This episode was regarded as a clear advancement of political and civil rights in Mexico’s history. During the first decade of the second millennium, Mexico earned a rating of 2 in House of Freedom on a

scale from 1 to 7, where 7 is no political and civil freedom¹¹⁷. But over the last 10 years, Mexico has gone back to a rating of 3 in both political and civil rights, implying that the country is considered only 'partly free'. This regress is the result of severe human rights violations, 'widespread killings, enforced disappearances, and torture committed by soldiers and police' (Human Rights Watch 2015)¹¹⁸, the rise of violence, and the state's incapacity to establish social order¹¹⁹.

Indeed, Mexico has also failed to guarantee people's safety. In 2013, it had a considerably high rate of homicides—22.7 per 100,000 habitants. This was significantly higher than the average of all 187 countries within the HDI (6.9) and even higher than the average of the group with low HDI (14.6). Some suggest that the situation in Mexico is no longer a case of 'public security' but one of 'national security' (Obregón 2013, p. 53)¹²⁰. However, the most emblematic example of this humanitarian, social, political and civil crisis is the kidnapping and disappearance of 43 students in 2014 in Ayotzinapa, in the state of Guerrero, by the local police in collusion with a local gang¹²¹ (e.g. see Rath 2014, Estevez 2014, Wilton 2014). But more worrying is the fact that the case of Ayotzinapa is part of a much larger problem which includes more than 20,000 people who have disappeared since 2006 (Amnesty International 2015; see also Grandin 2014) as well as the systematic killing of journalists (CPJ 2015, Hernández 2015). And yet impunity has been the most common resolution to this situation. According to the National Survey of Victimization and Perception of Public Safety (ENVIPE), impunity in Mexico—understood as the difference between reported crimes and effective sentences—was 99.6% in 2012 (Soltero 2015)¹²².

In terms of inequality, Rawls advises that 'large and inheritable inequities of wealth [are] incompatible with the fair value of the political liberties... [and that] large disparities of income...violate the difference principle' (Rawls 1999, p. XV).

¹¹⁷ Available at <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VXCMqs9Vikr>.

¹¹⁸ See Human Rights Watch report 2015 available at <http://www.hrw.org/world-report/2015/country-chapters/mexico>.

¹¹⁹ See Mexico's summary in House of Freedom available at <https://freedomhouse.org/report/freedom-world/2015/mexico#.VXB6ss9Viko>.

¹²⁰ For issues of insecurity, see also BBC (2014b) and Partlow (2014).

¹²¹ Ironically, these students were intercepted by the police when they were going to join the public protests and remembrance of the massacre of the students of 1968. A chronology of the events can be found at <https://news.vice.com/article/ayotzinapa-a-timeline-of-the-mass-disappearance-that-has-shaken-mexico>; see also the case of the massacre of Tlatlaya by the Mexican army in Silva (2015).

¹²² See also the Global Index of Impunity 2015 where Mexico is considered the second worst country among the 59 included in the report. On a positive note, Mexico is one of the 59 out of 134 country members of the UN that provide all the information necessary for the study.

In this respect, the previous section showed that the levels of inequality in Mexico are simply indefensible. The figure becomes even more problematic when considering that the minimum wage in Mexico (\$146 per month) is one of the lowest in Latin America (La Jornada 2015) and lost 71.3% of its purchasing power between 1983 and 2010 (Calva 2012). It is not surprising, then, that inequality in Mexico does not decline despite the large amount of hours worked per year¹²³ (OECD 2015 data).

But more revealing is the fact that these negative effects and the threat of these social ailments are aggravated for the worst off of society. For instance, the condition of the indigenous population, which accounts for 10% of the total population and has been the most disadvantaged group throughout Mexico's history, continues to lag behind in comparison with that of the non-indigenous population in most domains of life. According to a special report (PNUD 2010¹²⁴), the HDI of the indigenous population is systematically lower than that of the rest of the population. In fact, the worst score of an indigenous municipality in Mexico (0.3) is even lower than that of the worst performer in the world (Niger) in this indicator (0.33). In addition, their situation has only gotten worse in recent years. In relation to multidimensional poverty, in 2008, 93.9% was deprived in at least one of the social rights, 64.2% was deprived in at least three rights, and 70.9% was living in multidimensional poverty (39.2% was in extreme multidimensional poverty) (PNUD 2010). In 2010, these figures were 95.8%, 64.3%, 79.3% and 40.2% respectively (INEGI 2013)¹²⁵.

The situation of the indigenous population already exposes that the unequal social arrangement in Mexico has not been for the benefit of the least advantaged groups of society. Another indication is the fact that social expenditure has been highly regressive in terms of human development and in terms of access to rights (PNUD 2011) since it has consistently benefited in higher proportions the richest deciles of society (Scott 2008, 2014). For example, in 2008, the poorest quintile received 13% of the total public expenditure whereas the richest received 31.7%

¹²³ Data available at <http://xroads.virginia.edu/~hyper/hns/garden/columbus.html>.

¹²⁴ PNUD 2010 offers a thorough analysis of the disadvantaged condition of indigenous groups in Mexico in terms of education, health, nutrition, opportunities, among other indicators.

¹²⁵ It is important to mention that although these numbers come from two different sources, they are comparable since they come from different years of the National Household Survey on Income and Expenditure (ENIGH; acronym in Spanish) which is designed precisely for the purpose of time comparison. See also CEPAL (2014, p. 85) for disaggregated figures of rural and urban poverty (indigenous groups generally inhabit rural areas).

(PNUD 2011, p. 65; see also OECD 2014a, graph on p. 5). Put simply, the report summarises this pro-rich bias as follows:

... in 2008, nearly four times more government resources were spent to subsidize gasoline than in all programmes to combat poverty. Thus, in the course of a month, the owner of a luxury van received a grant of \$1,840 [\$122 approx.] by filling up his gas tank while a family of four living in extreme poverty received, on average, \$1.380 [\$92 approx.] by *Oportunidades* (IMCO 2009 cited by PNUD 2011, p. 32; my translation).

This is particularly relevant once it is acknowledged that, aside from the indigenous population, there are many other groups that also suffer systematic impairments (e.g. the disabled, the elderly and immigrants). All of these groups are worse off in terms of income and access to social services and opportunities in comparison with the rest of the population (PNUD 2011, CONAPRED 2011a). Finally, to make things worse, public demonstrations to protest against these and many other atrocities have been answered by the government with repression, such as the response to the 43 students of Ayotzinapa, and by pre-approving a constitutional ban of street protests (Schwietert 2014).

In short, in the light of this evidence, it would be unjustified to suggest that Mexico has become a more just society because there has been some capability expansion for the poor. There is little merit—with respect to justice—in advancing people's basic capabilities (although these are important and desirable social gains) if its main achievement is that a person is now more educated and more healthy but exploited (and discriminated, excluded, subjugated and marginalised). In such a situation, capability advancements do not necessarily represent a more just society. Constructing a more just society would require that justice-enhancements go in a certain direction. In this particular case, the Rawlsian ideal of justice serves the purpose of providing that benchmark. It is in this sense that what we consider an advancement of justice is heavily dependent on how justice is conceptualised and as such an ideal of justice is essential for reducing injustice.

6.4 Assessing the reduction of injustice through a relational lens

Mexico's persistent levels of poverty and inequality, as well as the major social and political crisis that the country has experienced in recent years, demonstrate that the urgency to construct a more just society is as pertinent today as it was more than 100 years ago when the revolution took place. The preceding section showed that having an ideal notion of what we should aim for is necessary to assess the success of practical efforts in that direction. Thus, it highlighted the necessity of a dual framework which combines Sen's IJ and Rawls' ideal theory of justice. This section illustrates why a translation of capabilities in the narrow form of *Oportunidades*, even if necessary, is insufficient to transform the unjust reality of poverty in Mexico.

The problem with Sen's framework, the previous chapter has argued, is that it misconceives injustice in the narrow form of capability-deprivation and as such the guidance it provides can be reduced to palliative remedies. This is because, by categorising social and relational factors as 'conversion factors', it runs the risk of treating this social dynamic solely as a fixed entity that should be reflected simply in the heterogeneity of individuals to convert resources or other opportunities into actual functionings. This idea can be further illustrated by considering Sen's reference to Adam Smith's classic example of the ability of people to 'appear in public without shame' and participate in the public life of a community. In relation to these situations, Sen concludes that, in certain social contexts, redressing this kind of unfreedom would require 'higher standards of clothing and other visible consumption'. And he suggests that a similar logic 'may [also] apply to the personal resources needed for the fulfilment of [relational notions such as] self-respect' (Sen 1999a, p. 71; see also IJ, p. 255). Elsewhere, Sen constantly repeats that 'more income is needed to buy enough commodities to achieve the *same social functioning*' (Sen 1999a, p. 89, emphasis in original; see also p. 74). This confirms that, from Sen's perspective, relational conversion factors can be subsumed in terms of the different amount of resources that different persons require to achieve the same functioning.

This dissertation has argued that this indirect way of accounting for relational factors reinforces a confined and static understanding of injustice, i.e. as the lack of those things that are necessary to function adequately. In this account, relational conversion factors are seen only as an entity that either increases or decreases the *intensity* of individual's deprivation which in return justifies more or

less resources devoted to her. This strategy, however, is problematic because it fails to address the social processes that lie behind the capability-deprivations of individuals.

Indeed, these worries can be also illustrated by *Oportunidades* in its narrow conceptualisation of poverty and in the actions taken to remedy it. In resonance with the language of capabilities and functionings, the former minister of finance Santiago Levy—considered the main architect of the programme—identifies the extreme poor as ‘those who cannot secure enough nutrition to *function adequately*...[and] are less able to lead a healthy life...and [to] participate in educational activities’ (1991, p. 7, emphasis added). What matters, he adds, is not ‘the number of hospital beds per region but...health status; longer life expectancy is a result of good nutrition and healthy lives’ (1991, p. 10). Extreme poverty is thus defined as the individual condition of simultaneously lacking adequate nutrition, education and health. Moreover, the design of *Oportunidades* recognises that individuals can have different abilities to achieve the considered functionings because of distinct social and relational factors. For instance, acknowledging the social processes behind the gender bias in the value of education for girls, the programme provides a higher scholarship stipend for girls than for boys from secondary education onwards—when the drop-out rates of girls are higher. That is, in line with Sen’s understanding of conversion factors, extra resources are redirected to girls in order to address the relational factors that disadvantage girls (in comparison with boys) and to help them attain the same functioning of education.

This example reveals the potential limitations of this narrow conceptualisation of poverty where relational factors are taken into account only as objects that can exacerbate someone’s deprivation but that are left outside of direct normative judgement. Such a conceptualisation puts the focus of political action on the individual and her deprivations. As a result, reducing poverty becomes a matter of restoring to a greater or lesser degree what the person is lacking (income, access to education, health, participation, etc.) to whatever levels are deemed appropriate while the underlying injustice-generating social processes is left out of the scope of political action. For example, it leaves out the different actions and interactions that produce the social outcome of individuals lacking education (or health, fulfilling jobs, and so on, in the case of indigenous people) as well as those actions and interactions that directly shame, devalue or humiliate some persons

or their deprivations or both. Yet, by ignoring these social processes, a narrow understanding of injustice has at least two undesirable consequences. First, it creates a fictional division between how the life of one person goes from the *doings* and *beings* of the rest of the society and the social environment in which this deprivation takes place, which is considered only indirectly and incompletely. In the case of *Oportunidades*, for instance, only the fact that others devalue the worth of education for girls is taken into account and is so only indirectly.

A second implication of interpreting injustice solely in terms of individual capability-deprivations is that it has the unfortunate spill-over effect of implicitly suggesting that the 'causes' of injustice can be found in what the person herself lacks¹²⁶. This in turn gives rise to rather confused assertions about the reach of anti-poverty programmes, such as presenting *Oportunidades* as a programme that focuses on 'the causes of poverty (lack of education) and not just its consequences (low incomes)' (Székely and Fuentes 2002, p. 132). In a similar vein, Levy (1991), the former minister of finance, proudly notes that understanding poverty in terms of capability-deprivation 'helps to identify what benefits need to be delivered, where, and in what priority' (p. 8) in order to enable the poor to function adequately and "get on their feet" and work their way out of poverty' (p. 53). Similar to the narrow view of injustice described in the previous chapter (Figure 5.2), this assumes that when the once-deprived individuals are educated, healthy and able to participate in public deliberation, a more just society will automatically follow from the exercise of their capabilities and agency.

In this paradoxical way, these two implications artificially construct poverty as a problem of individuals themselves. If indigenous people in Mexico are worse off than the rest of the population, it is because they are not educated, not healthy, not productive, and so on. Yet this conclusion based on a narrow understanding of injustice would be unfortunate since it might not be coincidental that indigenous people are the worst performers in all of these domains of poverty. One could argue that it is hard to disassociate such deprivations from the multiple faces of discrimination they face. For example, consider the fact that the returns of an extra year of education, the quality of public services they receive, and the opportunities to get a job (or receive equal pay for the same job) are systematically lower in

¹²⁶ Consistent with the market-liberalisation process in Mexico, Young (2011) suggests that this discourse where 'the causes of being poor are largely traceable to attributes and behaviour of the poor people themselves' (p. 3) originated in the early 1980s.

comparison with the non-indigenous population (CONAPRED 2012, 2011a, 2011b; PNUD 2010).

One could argue that the example of *Oportunidades* relies on a particularly partial understanding of capabilities. However, a capability-based assessment should also 'scrutinize the context in which economic production and social interaction take place' (Robeyns 2005, p. 99; see also Alkire 2008). And, indeed, it is undeniably the case that the notion of capability is comprehensive enough to capture people's varying forms of unfreedoms beyond individual deprivations. Nonetheless, one could still ask, what kind of public action would it inspire/justify to remedy such injustices? This is the real question that is being explored here. In this respect, one should be able to recognise that, despite its important achievements, a capability-based metric of injustice is susceptible to some problems when it comes to orienting remedial action. This is why an explicit reflection about the scope and consistent translation of normative demands into the real world is fundamental.

To this end, by underlining the relational nature of injustice as an explanation of why, how and by whom some people can experience unequal access to valuable opportunities or participate in public deliberation (or do both), core elements of critical theories provide a promising complement to a dual framework in practice. From this perspective, action guidance should go beyond the understanding of an individual embedded in a particular (static) social context to focus on a person whose deprivations are always immersed in dynamic social processes and interactions with the state, institutions or others. Political action, then, takes direct note of the *doing* and *beings* (i.e. people's exercise of agency) that reinforce a particular basic structure that systematically harms and disadvantages some. One could think of these human actions and interactions as sustaining a 'social padlock' (CONAPRED 2012) that cannot be disassociated from people's disadvantages in terms of opportunities to *be* and *do* what they have reason to value. Hence, in contrast to the narrow evaluative aspect of capability, this refinement for practical action regards this social padlock as a function of human action and intersubjective processes (Young 1990, 2011) rather than understanding it as an 'objective constraint' (Young 2011, p. 53) as if 'social facts are things, independent of human action' (Young 2011, p. 56).

This conceptual shift in the understanding of injustice towards a broader relational way shields a capability-inspired policy to be solely concentrated in what a disadvantaged person lacks to incorporate also a relational understanding of her deprivation. As such, a relational understanding of injustice can be seen as subsidiary to the Rawls/Sen dual framework¹²⁷. It becomes relevant only to rectify an unjust situation already identified in terms of what happens to people, for example deprivations such as lack of education, health, income, political participation, etc. Hence, instead of aiming at distinguishing between 'good' and 'bad' social structures and between 'good' and 'bad' behaviours *a priori*, this dissertation has argued that the focus on these social processes is appropriate *a posteriori*.

Under this understanding, it is once the unjust situation of 50% of Mexicans living in multidimensional poverty has been identified that political guidance needs to be broader in scope and address, in addition to people's lack of capabilities, the actual behaviours and interactions that reinforce and maintain such an unjust outcome. This means that just as it is essential to influence poor people's valuation and behaviour in relation to education, health, nutrition, etc. as these are thought to be non-negligible for a more just society, so it is essential (for the same reason) to influence other people's behaviour towards the recognition about how their actions and the way they relate to one another have a negative impact on other people's chances in life. That is, not only what the poor *do* (or not do) and *are* (or are not) is of political concern for constructing a more just society, but also what others *do* and *are*. In this sense, Young (2011) points out that only the responsibility of the poor is politicised while the responsibility of the non-poor and its political relevance for justice are not adequately studied. Without paying attention to the latter, however, Mexico's advances in human capabilities of the poor become insufficient to create a more just society when embedded within a culture of inequality, discrimination and social fragmentation.

This broader relational understanding of injustice thus reveals that if justice has anything to do with moving in the direction of Rawlsian demands of equal dignity

¹²⁷ In this way, the contributions of critical theory 'mean less [a] shifting away from Rawls' theory than deepening some of its central elements' (Young 2006, p. 96). They convincingly illuminate that in the real nonideal world, not only economic transactions but also social norms, habits, attitudes and social practices reproduce unjust social structures that ought to be corrected. Therefore, along with this dissertation, one can conclude that these corrections are relevant not as critiques towards ideal conceptions of justice or Sen's comparative framework but for the practical concern of orienting political intervention towards justice without having to define comprehensive rules for human behaviour.

and guaranteeing people's exercise of rights, liberties and opportunities, then these social actions and interactions must be examined (when they are in opposition to demands of justice). For it is also through intersubjective interactions that rights, opportunities and self-respect are enabled or restrained (Pereira, 2013, Young 1990). This might be particularly relevant for the context of Mexico, which despite its explicit political commitment for advancing social justice and its continual efforts in that direction, remains equally unjust, not only in terms of inequality and poverty but also in the most basic and fundamental aspect of justice, namely the recognition of people's equal dignity. As described earlier, the social and political fragmentation of Mexican society has escalated in recent years. In this context, it is urgent that discussions of justice have something more to say to political actors and do something more than simply fixate efforts on improving the lot of the poor—as usual recommendations to the programme of *Oportunidades* do. For instance, most recommendations in the literature emphasise improving the quality of social services that the poor receive—which is considered the most 'unequalizing factor' (Scott 2014, p. 384)—or generating employment opportunities for the poor (Saucedo 2012, Medrano 2011, PNUD 2011, Bayón 2009, Riesco 2007) or enhancing poor people's participation in demanding accountability in relation to how public spending is distributed (PNUD 2011).

Without undervaluing these relevant aspects to improve people's lives, one should note that what is omitted is the question about *why* these conditions are lacking. What are the social factors that enable and the social mechanisms that render acceptable the unequal provision of services, the unequal concern for the lives of different groups, and ultimately the unequal treatment of the poor? Answering this would require a direct evaluation of the mechanisms in which different actions, attitudes and relations determine and perpetuate—at least partly—people's disadvantages. Yet, given the illustrative purpose of this chapter, a thorough empirical analysis of these relational features is beyond the scope of this dissertation. But it briefly points out how the context of Mexico provides good reasons to highlight the practical and political relevance of these concerns¹²⁸.

¹²⁸ See CONAPRED 2012 for a more detailed analysis of these mechanisms in various domains of life, such as retributive justice, health, nutrition, work, freedom of conscience and religion, political rights, information, freedom of speech, access to credit, and education.

Aside from everyday life in Mexico, the existence of social mechanisms that constrain people's rights and opportunities and perpetuate the unjust status quo is further confirmed by two National Surveys on Discrimination in Mexico (ENADIS 2005, 2010) and the recent *Report on Discrimination in Mexico* (CONAPRED 2012)¹²⁹. These reports understand 'discrimination' as the 'asymmetry of treatment' between persons (CONAPRED 2012, p. 13; my translation). It encompasses any intersubjective 'process, mechanism, context, institution, discourse or norm... [that] unjustly, asymmetrically, and systematically exclude, restrict or deprive people of their dignity, autonomy, rights or goods... who are signalled for reasons related to stigmas or social markers' (CONAPRED 2012, p. 37; my translation) such as sexual orientation, colour of the skin, age, disabilities, and physical appearance (CONAPRED 2012, p. 19).

Similarly to critical theories (e.g. Pereira 2013, Fraser 1997, 1995, Young 1990), CONAPRED suggests that these transgressions happen and are reproduced through relational means in the space of culture, symbols and communicative action. For example, with colloquial phrases such as 'it is not the Indian's fault, it is the fault of whoever made him the godfather' or 'we must improve the breed [i.e. race]'. Or, when the word 'Indian' is used as an insult (which is very common in Mexico), some races are deemed superior (Camacho 2014). Likewise, when Indians are portrayed as lazy, retrogrades, or an 'obstacle in the road to development' (Aubry 1989 cited by Gall 2013), it automatically justifies inequalities and discrimination in favour of the privileged (CONAPRED 2012). In general, this impairment in Mexico happens via the use of stigma to degrade others, a disparaging discourse, or even direct and arbitrary mistreatment by the authority of the most vulnerable people (or the not so vulnerable as in the case of the Mexican indigenous poet being detained on her way to a public performance). On the basis of these findings, Székely states that the results of the surveys expose 'a society with strong practices of exclusion, scorn, and discrimination against certain groups of people' which are 'strongly rooted and assumed in social culture' (2006, p. 9) that 'damages millions of women and men from their birth to their grave' (CONAPRED 2011a, pp. 8–10).

In numbers, this can be summarised as follows. According to the national survey in 2010, 55% of Mexicans affirm that persons are discriminated against because

¹²⁹ Both the surveys and the report are coordinated by the National Council to Prevent Discrimination (CONAPRED; acronym in Spanish).

of their skin colour, and 35% of the population felt that their rights were not respected as a result of their personal appearance or skin colour. Given that 65% of the population define the colour of their skin as dark-skinned, these figures are telling (ENADIS 2010). Particularly relevant for this chapter, 71.4% of the population admit that the rights of indigenous people are not respected, and indigenous people themselves responded that the main problem faced by their group was discrimination (ENADIS 2010). For instance, it is well documented that indigenous people are less likely to be employed in a formal well-remunerated job (CONAPRED 2012). ENADIS (2010) also shows that 40% of indigenous respondents attest that they do not enjoy the same opportunities to get a job because of their ethnicity and their physical appearance (CONAPRED 2011a). Overall, indigenous people are among the most vulnerable groups to be systematically discriminated against, that is, mistreated in most areas of life (CONAPRED 2011b). But other groups, such as women, religious minorities, youngsters, the elderly, people with disabilities, immigrants, and the LGBT community, are also targets of these dynamic relational forms of injustice. However, it is those from a poor background who are generally most discriminated against (CONAPRED 2011a). Ultimately, these discriminatory practices and behaviours partly determine 'who can achieve a satisfactory income and who is marginalised for unjustified reasons' (CONAPRED 2012, p. 78).

There are too many real cases that can be used to bring this discussion to life¹³⁰. For example, there are various cases of indigenous women having to give birth outside of public hospitals because the personnel refused to attend them¹³¹; or the case of indigenous people arbitrarily detained, incarcerated and even tortured without due process for defending their territory or forced eviction¹³²; or other cases of highly ranked public servants who make fun of the way indigenous or simply poor people speak, look and dress¹³³. One of the most extreme expressions of this systematic social impairment is the case of Ayotzinapa mentioned above. More discouraging still is the fact that this appalling event was justified or downplayed by many people using phrases such as 'damned shabby

¹³⁰ See also CONAPRED 2011b for examples in relation to access to justice, health, education, employment, and income.

¹³¹ Santaaulalia (2013), Tonantzin (2013).

¹³² For example, see Lizarraga, available at <https://www.change.org/p/freedom-for-nestora-salgado-american-activist-imprisoned-in-mexico>; Tuckman (2015).

¹³³ *El Economista* (2015), Tourliere (2015).

(*nacos*¹³⁴), they deserved it' and 'too much scandal for these f*** filthy dark-skinned Indians! They are 100% replaceable by other 30 million *lacas*'¹³⁵. Similarly, the Attorney General of Mexico responded with disdain when asked about several inconsistencies in the official version provided by the government. These reactions would have been unlikely had the targets been middle-class students from a private school (Paxman 2014).

In sum, by illuminating the way in which rights, opportunities and equal status are denied to a large proportion of the population in Mexico, the documents produced by CONAPRED as well as this brief recount of examples offer a glimpse at the existence of these relational factors, the form they can take, and the way in which they obstruct the possibility of a more just society. What this exposes, moreover, is that one could be highly doubtful about any real transformation of the unjust status quo in Mexico unless the dynamic aspect of these relational factors is seriously taken into account. In fact, one could even ensure that there is little hope that the suggested improvements to *Oportunidades* (equalising quality of social services, creating good-quality jobs, and equalising political agency of the poor) would actually occur within this context of systematic discrimination.

These fears, unfortunately, do not seem to be unjustified as they appear to be further confirmed by resurging—or simply continued—levels of inequality, privilege, racism and discrimination in different—even 'advanced'—societies across the globe. Consider, for example, police brutality (see Swaine et al. 2015) and biased decisions against black people by the criminal justice system in the US (e.g. Kleeman 2014) and race discrimination or simply 'old-fashioned snobbery about accents and mannerisms' (Weaver 2015) in recruitment practices in the US and the UK respectively. These cases are good reminders of the limits of attempting to 'advance justice' by focusing exclusively on enhancing the opportunities of the disadvantaged while ignoring the practices of others.

In this regard, the previous chapter argued that an unjust social context could not be transformed simply by (periodically) expanding individual capabilities in terms of education, health, job, participation, etc. Unless social practices that maintain and perpetuate the unjust status quo are directly criticised and addressed through

¹³⁴ *Naco* is a pejorative word often used in Mexico to describe ill-mannered, poorly educated people or those with bad taste.

¹³⁵ *Laca* is used to refer to a person who not only is cheap and freeloading but also uses others for his own ends without caring about other people.

normative political action, then there is little hope that a more just society can be glimpsed in the near future.

VII. Constructing a more just society in practice: A comprehensive approach to justice

The main objective of this dissertation has been to explore in what way theoretical frameworks of justice could guide justice-enhancing actions in real unjust contexts. It has argued that Sen's framework is insufficient on its own to achieve what it claims to do, and therefore it has identified and defended different normative levels of justice, their distinct nature and purpose, and the scope under which their contributions can be judged. The overall argument that this dissertation has advanced is that a normative conception of justice to orient social and political actions should (1) be in line with an ideal of justice, (2) promote morally desirable mechanisms to advance justice, and (3) neutralise the relational mechanisms that reproduce injustice. Although this comprehensive (three-level) framework seems to add extra steps to each of the approaches seen in isolation, this dissertation has argued that this is a requirement for a practical framework committed to normatively informing justice-enhancing change. Each of these levels is essential for constructing a more just society in practice.

These conclusions follow from research questions set out in the introductory chapter. This dissertation has departed from the foundational idea that development practice is inextricable from questions of justice. The inability of highly abstract theories of justice to provide adequate guidance, however, is pushing the general literature on social justice to shift its priority from primarily theoretical enquiry towards more practice-oriented frameworks. In this context, Sen's *Idea of Justice* is considered the most representative work advocating for a practical conception of justice today. In contrast to previous work on capabilities, which he presents solely as a space of evaluation of states of affairs, *The Idea of Justice* presents a comparative method to assess the justness of states of affairs as a 'broad theory of justice' (IJ, p. ix, 397). It has the explicit aim of offering a useful framework to orient political action to enhance justice and to inform how societies should be arranged here and now.

This dissertation set out to critically analyse Sen's idea of justice in this endeavour and argued that there were important theoretical lacunas in his framework that required further refinement in order to successfully guide injustice-reduction

interventions. This dissertation presented a step forward in this direction. Its argument was structured around two main research questions: (1) To what extent does Sen's approach to justice succeed in offering a practical framework for reducing injustice in the real world? (2) What kind of guidance does Sen's idea of justice offer to inform injustice-reduction interventions in the real world?

Chapter II discussed Rawls' theory of justice as the most important theory that provides an alternative framework to utilitarianism in order to place considerations of justice at the core of the social arrangement of societies. The chapter has argued that Rawls theory helps us to explain why a theory has to work within the boundaries of ideal theory and why justice requires the priority of the individual and her freedoms over other ends. It also suggested that if justice is what a society should strive for, then an ideal theory is necessary to provide a systematic conceptualisation of a just society that serves two purposes: it identifies injustice in a systematic way, and it offers an endpoint to which social change needs to transit towards.

To answer the first research question, this dissertation addressed Sen's twofold critique of Rawlsian-like theorisation, which were referred as (1) his 'point of departure' (i.e. a useful theory of justice provides criteria for comparing states of affairs as more or less just rather than aiming to define a perfectly just society) and (2) his 'methodological proposal' (i.e. advancing justice is a matter of enhancing individual freedom through public discussion). These points were addressed in chapter III ('Sen's comparative approach: A replacement of the transcendental approach?') and chapter IV ('Sen's transcendental nonideal approach') respectively.

Chapter III highlighted that, in the absence of an external criteria of ideal justice, a purely comparative exercise was insufficient to adequately rank two social arrangements as more or less just. It argued that although the comparison between two nonideal states of affairs can, in principle, be carried out, (1) the partial ordering of such a comparative exercise depended on which criterion is used to assess the situation, and thus (2) it could be judged as representing a justice-enhancing outcome or not, depending on how justice was conceptualised. Hence, the chapter reaffirmed that ideal principles of justice were necessary for comparing two states of affairs from the perspective of justice and as an endpoint to orient courses of action. The chapter concluded that a comparative view of justice was unlikely to prove useful to reduce injustice successfully if completely

disjoined from Rawlsian-like theories of justice. For what may appear as a justice-enhancing option in comparative terms in the short run may not be leading to, or even be counterproductive for, what justice requires in the long run.

Chapter IV discussed the conceptual framework that Sen proposes to advance justice and deepened the argument of the usefulness of ideal theory for this task. It argued that Sen's reliance on a shared notion of injustice as a starting point, and on public discussion for ranking states of affairs and promoting capability-improvements, does not provide an adequate theoretical framework to advance justice in the real world. The chapter suggested that Sen's starting point was inadequate for a normative theory since it could fail to call into question the unjust status quo in the real world. Hence, the dissertation has argued that if, in real unjust contexts, reaching a common understanding of injustice is often elusive and if a practical theory of justice should be able to criticise unjust realities beyond 'patent' cases, then an ideal theory able to systematically identify injustice is a necessary prerequisite to Sen's comparative method. This was illustrated by reference to one manifest case of injustice in Mexico which involved the arbitrarily detention and forced disappearance of students by the state police and which did not seem to disturb a significant part of the Mexican population.

In addition, the chapter has argued that in the absence of Sen's highly demanding understanding of reason and agency, partial orderings resulting from public discussion do not necessarily secure justice-enhancing change. At worst, in the context of social and political dynamics of inequality, it can end up legitimising the unjust status quo. Therefore, if Sen's comparative method is concerned with advancing justice in practice, then the outcomes it produces need to demonstrate that they are transitional to a more just society judged from the perspective of an ideal standard of justice. This does not necessarily imply setting a fixed 'list' of capabilities that rigidly defines (even if partially) what constitutes a good life and that prescribes which political action should be advanced in every corner of the world regardless of the specific unjust realities. The chapter has proposed instead that, in order to represent an advancement of justice, public reasoning would also have to justify the capability improvements it endorses in relation to how well they serve an ideal of justice.

This dissertation has thus concluded that Sen's comparative view of justice is unlikely to deliver its promise of promoting justice on its own and that it could be strengthened if presented as a normative nonideal theory directly linked to an

ideal theory (instead of a self-standing alternative to ideal theory). The dissertation has also gone beyond advocating the complementarity between ideal and nonideal theory by showing that, according to the nonideal criteria presented in this dissertation, Sen's *Idea of Justice* could be naturally related to Rawls' ideal theory to form an improved dual framework of justice.

In answering the second research question, this dissertation argued that if one is concerned with reducing injustice in practice, one also has to reflect on how normative ideas can best inform political action in specific unjust realities. Therefore, chapter V considered Sen's approach as a nonideal theory (i.e. as a framework already shielded from the difficulties it faces on its own). It discussed to what extent the normative guidance it provides (i.e. enhancing individual capabilities including the capability to be an active agent in public discussion) may be insufficient to transform unjust realities. The chapter has argued that the evaluative role of the notion of individual capability can be a liability when translated into political action. It runs the risk of misconstruing an unjust situation solely in terms of individual deprivations and as a consequence significantly limits the scope of political guidance it commands. The chapter illustrated this at a theoretical level by discussing that Sen's conceptual framework was not well equipped to adequately incorporate structural and relational processes without challenges. It showed that by conceptualising these as external factors, they were seen as analogous to *objective* phenomena that either facilitated or thwarted individuals' freedoms instead of recognising them as intersubjective *actions* that continuously reproduce injustice. Consequently, the guidance that the metric of capabilities offers fails to pass direct normative judgement on those *doings* and *beings* that maintain the unjust status quo as well as those actions that directly harm others.

Finally, chapter VI relied on the case study of Mexico's anti-poverty programme of *Oportunidades* to illustrate the main theoretical arguments developed in this dissertation. It exemplified first the argument that an ideal theory is needed in order to assess the outcomes of a purely comparative exercise from the perspective of justice. In this respect, it showed that although some important social improvements have been taking place in Mexico, these improvements—when judged from the perspective of Rawlsian ideal principles—have not translated into a more just society. In addition, the chapter highlighted the limitation of conceptualising poverty solely in terms of individual deprivations. It

showed that, although *Oportunidades* considers social and relational features, this information is taken into account only as affecting the intensity of the deprivation suffered by the individual, which in turn justifies a greater (or lesser) amount of resources redirected to restore individual lack of opportunities. *Oportunidades* thus leaves out of normative criticism the social mechanisms that reproduce those unjust outcomes. This dissertation has argued that this misconception of injustice and the kind of remedies it inspires partly explain the consistent levels of poverty in Mexico despite the increasing number of efforts to reduce it for the last 30 years. For this reason, this dissertation has concluded that if Sen's emphasis on individual freedoms and individual agency are to become prescriptive, then it needs to be further complemented by a broader relational conceptualisation of injustice to enlarge the scope of political action and address not only what individuals lack but also the social mechanisms that perpetuate such injustices. In doing so, this dissertation has proposed a broad general guideline for the prospective role of capabilities (Alkire 2008).

On the basis of its two research questions, this dissertation has reappraised well-known approaches to justice from a more practical-oriented lens. In the process, it has distinguished and exposed the contributions and limitations that distinct conceptions of justice have for the practical aim of reducing injustice. This has important implications for the antagonistic way in which debates about justice are usually presented which arguably has hampered more than facilitated the emergence of a conceptual framework able to effectively inform justice-enhancing change through development practice. Likewise, this dissertation has questioned the tendency of the literature to discuss and present theoretical frameworks of justice as all-purpose theories by uncritically demanding that one single theory cover every relevant aspect involved in producing justice-enhancing outcomes. This dissertation has advocated not only for the complementary role of ideal and nonideal theories but also for the complementarity between individual-focused perspectives of justice and relational notions of injustice. Ultimately, this may entail abandoning the idea of expecting one single conception of justice to be triumphant over all others in all three necessary components for constructing a more just society.

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Sen's *Idea of Justice* convincingly argues that there are countless injustices that can and should be remedied and that it is the job of normative theories of justice

to inform how justice can be advanced in the real world. This has also been the motivation behind this dissertation. Sen's theoretical corpus has already done much in providing us with the theoretical tools to start making the world more just, but it has stopped one step short from informing how these tools can best achieve their aims when translated in practice. This dissertation has attempted to contribute to this important discussion. If advancing justice is about constructing a society where *all* can be treated as ends in themselves and pursue their life plan under conditions of equality, then this dissertation has argued that, because the realities of injustice suffered by some are inseparable from the realities of others, Sen's conceptual framework has to be supplemented with a broader understanding of injustice. It is only then that a normative framework of justice could inform political action likely to transform the unjust reality of so many people whose situation is constantly perpetuated through social and intersubjective mechanisms.

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